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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Comprehensive Economic Partnership Agreement between the European Union and the Republic of Indonesia

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COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF INDONESIA

PREAMBLE

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THE EUROPEAN UNION, hereinafter referred to as the "Union" or the "EU",

and

THE REPUBLIC OF INDONESIA, hereinafter referred to as "Indonesia",

hereinafter individually referred to as a "Party" and jointly referred to as the "Parties",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part, signed in Jakarta on 9 November 2009 (hereinafter referred to as the "Framework Agreement"), and their important economic, trade and investment relationship;

DESIRING to further strengthen their relationship as part of and in a manner coherent with their overall relations, and convinced that this Agreement will create a new climate for the development of trade and investment between the Parties;

DETERMINED to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment under this Agreement;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare and, to that end, reaffirming their commitment to promote trade and investment;

DESIRING to promote the competitiveness of their companies in their trade and investment relations;

CONVINCED that this Agreement will create an expanded and secure market for goods and services and a stable and predictable environment for investment, thus providing an opportunity to enhance the competitiveness of their companies in global markets;

RECOGNISING the importance of transparency in international trade to the benefit of all stakeholders;

SEEKING to establish clear and mutually advantageous rules governing trade and investment between the Parties and to reduce or eliminate barriers thereto;

DETERMINED to address the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade and investment, and to support their growth by enhancing their ability to participate in, and benefit from, the opportunities created by this Agreement;

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REAFFIRMING their commitment to the Charter of the United Nations done at San Francisco on 26 June 1945 and having regard to the principles articulated in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in Paris on 10 December 1948;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (hereinafter referred to as the "WTO Agreement"), and other multilateral, regional and bilateral agreements and arrangements to which both Parties are a party,

HAVE AGREED AS FOLLOWS:

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CHAPTER 1

INITIAL PROVISIONS AND GENERAL DEFINITIONS

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ARTICLE 1.1

Objectives

The objectives of this Agreement are to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties.

ARTICLE 1.2

Establishment of a free trade area

The Parties hereby establish a free trade area in conformity with Article XXIV of GATT 1994 and Article V of GATS.

ARTICLE 1.3

General definitions

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

(a) "Agreement on Agriculture" means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

(b) "Anti-dumping Agreement" means the Agreement on Implementation of Article VI of the GATT 1994, contained in Annex 1A to the WTO Agreement;

(c) "Articles of Agreement of the International Monetary Fund" means the Articles of Agreement of the International Monetary Fund, adopted in Bretton Woods, New Hampshire, on 22 July 1944;

(d) "covered enterprise" means an enterprise which is owned, directly or indirectly, or controlled, directly or indirectly, by an investor of one Party in the territory of the other Party, established in accordance with applicable laws[1], whether established before or after the entry into force of this Agreement; a juridical person is:

(i) "owned" by a natural or juridical person of a Party if more than 50 % of the equity interest is beneficially owned by natural or juridical persons of that Party; or

[1] In the case of investments made in Indonesia, "in accordance with applicable laws" may include specific approval in writing, if applicable.

(ii) "controlled" by a natural or juridical person of a Party if that natural or juridical person has the power to appoint a majority of its directors or otherwise to legally direct its actions;

(e) "CPC" means the Provisional Central Product Classification (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(f) "customs authority" means:

(i) for the Union, the services of the European Commission responsible for customs matters, or, as appropriate, the customs administrations and any other authorities empowered in the Member States or at the level of the Union to apply and enforce customs laws and regulations; and

(ii) for Indonesia, the authorities that are responsible under the legislation of Indonesia for the administration and enforcement of its customs laws and regulations;

(g) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with Article 2.4;

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(ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with the GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the SCM Agreement and the Safeguards Agreement, as appropriate; and

(iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered;

(h) "customs laws and regulations" means any laws and regulations applicable in the territory of either Party, governing the entry or import, exit or export and the transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;

(i) "days" means calendar days, including weekends and holidays;

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

(k) "existing" means in effect on the date of entry into force of this Agreement;

(l) "freely convertible currency" means a currency which can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions;[1]

[1] For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the IMF in accordance with the Articles of Agreement of the International Monetary Fund.

(m) "GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

(n) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(o) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization; and "chapters" and "headings" and "sub-headings" mean the chapters, the headings (four-digit codes) and sub-headings (six-digit codes) used in the nomenclature which makes up the Harmonized System;

(p) "IMF" means the International Monetary Fund;

(q) "investor" means a natural person or a juridical person of a Party that seeks to establish[1], is establishing or has already established an enterprise in the territory of the other Party;

(r) "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, trust, partnership, joint venture, sole proprietorship or association;

[1] For greater certainty, the Parties understand that, for the purposes of the definition of "investor", an investor that "seeks to establish" an enterprise refers to an investor that has taken concrete steps to establish an enterprise. Where a notification or approval process is required for establishing an enterprise, an investor that "seeks to establish" an enterprise refers to an investor that has initiated such notification or approval process.

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

(t) "measure of a Party"[1] means any measure adopted or maintained by:

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

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

(iii) any entity which is acting on the instructions of or under the direction or the control of a Party with regard to the measure;

(u) "Member State" means a Member State of the Union;

(v) "natural person of a Party"[2] means:

(i) for the Union, a national of one of the Member States of the Union[3] pursuant to its law; and

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1 For greater certainty, "measure of a Party" includes omissions of a Party to take actions that are necessary to fulfil its obligations under this Agreement.

2 For greater certainty, for the purposes of Chapter 8 (Liberalisation of Investment and Trade in Services), if a person possesses dual nationality of both Parties, they shall be deemed to be exclusively a national of the country of their dominant and effective nationality.

3 For the purposes of Chapter 8 (Liberalisation of Investment and Trade in Services), the definition of natural person of a Party also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

(ii) for Indonesia, a national of Indonesia pursuant to its law;

(w) "OECD" means the Organisation for Economic Cooperation and Development;

(x) "originating" or "originating good" means a good qualifying under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

(y) "Paris Agreement" means the Paris Agreement adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015;

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

(aa) "preferential tariff treatment" means the application of the customs duty under this Agreement to an originating good pursuant to Article 2.5;

(bb) "Safeguards Agreement" means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

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

(dd) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

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(ee) "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;

(ff) "service supplier" means a person that supplies or seeks to supply a service;

(gg) "small and medium-sized enterprise" or "SME" means a small and medium-sized enterprise, which includes micro, small and medium-sized enterprises and entrepreneurs;

(hh) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

(ii) "TBT Agreement" means the Agreement on Technical Barriers to Trade, contained in Annex 1 to the WTO Agreement;

(jj) "TFEU" means the Treaty on the Functioning of the European Union, done at Rome on 25 March 1957;

(kk) "third country" means a country or territory outside the territorial scope of application of this Agreement, as set out in Article 25.11;

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

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(mm) "UNCLOS" means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;

(nn) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969; and

(oo) "WTO" means the World Trade Organization.

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CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1

Objective

The Parties shall progressively and mutually liberalise trade in goods in accordance with this Agreement.

ARTICLE 2.2

Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods between the Parties.

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ARTICLE 2.3

Definitions

For the purposes of this Chapter, the following definitions apply:

(a) "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

(b) "consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;

(c) "export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

(d) "good of a Party" or "good of the other Party" means a domestic good within the meaning of GATT 1994, and includes originating goods of that Party; and

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

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ARTICLE 2.4

National treatment on internal taxation and regulation

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

ARTICLE 2.5

Reduction or elimination of customs duties

1. Except as otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on goods originating in the other Party in accordance with its Schedule in Annex 2-A (Elimination of Customs Duties).

2. For the purposes of paragraph 1, the base rate of customs duty shall be the one specified for each good in the Schedules in Annex 2-A (Elimination of Customs Duties).

3. If a Party reduces its applied most-favoured-nation customs duty rate, that duty rate shall apply to originating goods of the other Party for as long as it is lower than the customs duty rate determined pursuant to its Schedule in Annex 2-A (Elimination of Customs Duties).

4. Four years after the entry into force of this Agreement, on the request of a Party, the Parties shall consult to consider accelerating the reduction or elimination of customs duties set out in the Schedules in Annex 2-A (Elimination of Customs Duties) or broadening the scope of tariff reduction or elimination under this Agreement. Pursuant to Article 24.2, the Trade Committee may take a decision to amend Annex 2-A (Elimination of Customs Duties), including Appendix 2-A-1 (Tariff Schedule of the Union) and Appendix 2-A-2 (Tariff Schedule of Indonesia), to accelerate the reduction or elimination of customs duties or to broaden the scope of the tariff reduction or elimination.

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5. A Party may at any time accelerate unilaterally the reduction or elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 2-A (Elimination of Customs Duties). That Party shall inform the other Party as early as practicable before the new rate of import duty takes effect. The Party may raise an import duty back to the level established in its Schedule in Annex 2-A (Elimination of Customs Duties) for the respective staging period following a unilateral reduction.

6. Except as otherwise provided in this Agreement, a Party shall not adopt or increase a customs duty set as base rate on an originating good of the other Party in a manner inconsistent with its Schedule of tariff commitments in Annex 2-A (Elimination of Customs Duties).

7. For greater certainty, the originating goods classified under the tariff lines indicated with "X" in Annex 2-A (Elimination of Customs Duties) shall be excluded from any reduction or elimination of customs duties that takes place after the entry into force of this Agreement and commitment of future negotiation as referred to in this Article.

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ARTICLE 2.6

Export duties, taxes or other charges

1. A Party shall not adopt or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Paragraph 1 shall not apply to:

(a) measures which are adopted or maintained prior to 13 July 2025[1], except for goods subject to commitments in Annex 2-B (Export Duty Quota Schedule Pursuant to Point (b) of Article 2.6(2));

(b) the continuation or renewal of measures referred to in point (a), to the extent it does not decrease conformity with respect to the scope of goods covered by measures referred to in point (a); or

(c) future measures, with respect to goods obtained in mineral processing in the pre-smelting phase[2].

[1] For Indonesia, these are the following measures as in force on 13 July 2025: Minister of Finance Regulation No. 38/2024, and Minister of Finance Regulation No. 30/2025.

[2] "Mineral processing in the pre-smelting phase" is defined as the process that separates minerals from the run-of-mine and turns them into a concentrated, different product. This equals the scope of HS Chapters 25 and 26 and waste and scrap materials under HS Chapters 72-81 that can be recycled and marketed.

3. Notwithstanding paragraph 1, if a Party applies measures other than those in paragraph 2, the applied duty on exports to the other Party shall be reduced by 50 %. That reduction shall also apply to the export by investors of either Party which have invested in the other Party, regardless of the export destination.

4. Any continuation or renewal of the measures referred to in paragraph 2 shall be notified by the Party applying the measure to the other Party at least 60 days prior to the adoption of the measure. Upon such notification, the notifying Party shall provide the other Party with an opportunity to consult on the new measures under point (c) of paragraph 2. Where exceptional and critical circumstances requiring immediate action prevent such notification of measures covered by point (c) of paragraph 2, such notification shall be made as soon as possible.

5. If either Party applies a lower rate of duty, tax or other charge on, or in connection with, the exportation of a good to any other third country and for as long as it is lower than the rate applied to the other Party, that lower rate shall apply. For greater certainty, the Party may raise the rate of duty, tax or other charge on, or in connection with, the exportation of a good following a unilateral reduction.

6. At the request of either Party, or on an annual basis, the Trade Committee shall review any duties, taxes, or other charges of any kind imposed on, or in connection with, the exportation of goods to the territory of the other Party. Pursuant to Article 24.2, the Trade Committee may take a decision to amend paragraph 2 of this Article or Annex 2-B (Export Duty Quota Schedule Pursuant to Point (b) of Article 2.6(2)).

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7. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted under Article 2.7.

PUBLIC

ARTICLE 2.7

Fees and formalities

1. Each Party shall ensure that fees and charges on or in connection with importation and exportation shall be consistent with its rights and obligations under Article VIII of GATT 1994. A Party shall not levy fees or other charges on or in connection with importation or exportation on an *ad valorem* basis.

2. Each Party shall promptly publish details of the fees and charges on or in connection with importation and exportation and, to the extent possible, make such information available on the internet, so as to enable governments, traders and other interested parties to become acquainted with them.

3. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.[1]

[1] This paragraph does not apply to importation of goods of the other Party for the purposes of donation or grants granted to allow those goods to benefit from duty exemption.

ARTICLE 2.8

Import and export restrictions

1. A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party shall not adopt or maintain:

(a) export and import price requirements[1], except as permitted in enforcement of countervailing and antidumping duty orders and undertakings; or

(b) the mandatory use of pre-shipment inspections, as defined in the Agreement on Pre-shipment Inspection, contained in Annex 1A to the WTO Agreement, or any other inspection activity performed at destination, before customs clearance, by private companies on goods exempted from pre-shipment inspections for any third country.

[1] For greater certainty, this provision is not meant to prevent a Party from relying on the price of imports in order to determine the applicable rate of a customs duty in accordance with this Agreement.

ARTICLE 2.9

Import and export monopolies

1. A Party shall not designate or maintain a designated import or export monopoly, unless such designation is for public policy purposes[1], such as food security, for the trade of any good. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import or export any good to the other Party.

2. For greater certainty, this Article is without prejudice to the provisions in Chapter 8 (Liberalisation of Investment and Trade in Services) and Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union) and Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia), as well as Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) and Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia), and does not include a right that results from the grant of an intellectual property right.

ARTICLE 2.10

Transit

Article V of GATT 1994 is hereby incorporated into this Agreement, *mutatis mutandis*.

[1] For the purposes of this Article, the exclusion for public policy purposes does not apply to raw material and energy goods, other than electricity, as defined in Chapter 14 (Energy and Raw Materials).

ARTICLE 2.11

Origin Marking

1. Except as otherwise provided for in this Agreement, and if Indonesia requires a mark of origin on the importation of goods of the Union, Indonesia shall accept the origin mark "Made in the EU" or the equivalent in a language required by Indonesian origin marking requirements under conditions that are no less favourable than those applied to marks of origin of Member States. This acceptance shall be without prejudice to Indonesia's right to require information on the origin of imported goods.

2. For greater certainty, this Article is not meant to confer originating status pursuant to Chapter 3 (Rules of Origin and Origin Procedures).

ARTICLE 2.12

Import licensing procedures

1. The Parties shall ensure that all import licensing procedures are neutral in application, administered in a fair, equitable, non-discriminatory and transparent manner, and consistent with their commitments in Annex 2-A (Elimination of Customs Duties).

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2. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures. To that end, Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. A Party that institutes licensing procedures, or changes to existing licensing procedures, shall notify the other Party thereof within 60 days of publication. The notification shall include the information specified in Article 5(2) of the Agreement on Import Licensing Procedures. A Party shall be deemed to be in compliance with this provision if it has notified the relevant import licensing procedure, or any modifications thereof, to the Committee on Import Licensing provided for in Article 4 of the Agreement on Import Licensing Procedures, including the information specified in Article 5(2) of that Agreement.

4. On request of a Party, the other Party shall promptly provide the relevant information specified in Article 5(2) of the Agreement on Import Licensing Procedures, regarding any import licensing procedure that it has adopted or maintains, or changes to existing licensing procedures.

5. Each Party shall make publicly available and accessible via the internet:

(a) all relevant rules, information, procedures and other conditions, including any exceptions thereto, for submitting and granting an import licence application;

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

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

6. If a Party has denied partially or completely an import licence application with respect to a good of the other Party, it shall, on request of the applicant and no later than 15 days after receiving the request, provide the applicant with a written explanation of the reasons for the denial and, if applicable, the procedures for resubmission of an application.

7. Each Party shall ensure that:

(a) an applicant is not prevented from submitting another application solely on the basis of a previously rejected application; and

(b) an applicant has the right of appeal or review through judicial, arbitral, or administrative tribunals or procedures that are independent of the agencies entrusted with the administrative enforcement, in accordance with the respective Party's laws and regulations.

ARTICLE 2.13

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place whenever practicable and no later than the date such procedure or modification takes effect.

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2. Each Party shall ensure that the publication of export licensing procedures includes the following information:

(a) the texts of its export licensing procedures, or of any modifications it makes to those procedures, including a description of the goods subject to each licensing procedure, the process for applying for a license and any criteria an applicant must meet to be eligible to apply for a license and the administrative body or bodies to which an application or other relevant documentation should be submitted; and

(b) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export license.

3. Within 60 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that institutes new export licensing procedures, or makes changes to existing licensing procedures, shall notify the other Party thereof within 60 days of publication. The notification shall include the reference to the source or sources where the information required in paragraph 2 is published and, where appropriate, the address of the relevant government internet website or websites.

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ARTICLE 2.14

Exchange of information and data

1. For the purposes of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the entry into force of this Agreement until 10 years after the tariff elimination is completed for all goods according to the Schedules in Annex 2-A (Elimination of Customs Duties). Unless the Trade Committee decides otherwise, that period shall be automatically extended for five years. The Trade Committee may decide, pursuant to Article 24.2, to subsequently extend this period further.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and those that received non-preferential treatment.

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ARTICLE 2.15

Specific measures concerning the management of preferential treatment

1. The Parties shall co-operate in preventing, detecting and combating breaches of customs laws and regulations, as defined in the Protocol on Mutual Administrative Assistance in Customs Matters, related to the preferential treatment granted under this Chapter, in accordance with their specific obligations under Chapter 3 (Rules of Origin and Origin Procedures) and the Protocol on Mutual Administrative Assistance in Customs Matters.

2. Without prejudice to temporary suspension as provided for under the Chapter 3 (Rules of Origin and Origin Procedures), a Party may, in accordance with the procedure laid down in paragraph 3, suspend, for a limited period of time, the relevant preferential tariff treatment of the goods concerned if:

(a) that Party has made a finding, on the basis of objective, compelling and verifiable information, that systematic and large-scale breaches of customs laws and regulations related to the preferential treatment granted under this Chapter, have been committed; and

(b) the other Party repeatedly and unjustifiably refuses or fails to cooperate with that Party as provided for in paragraph 1[1].

[1] For greater certainty, cooperation is understood to be in place, for example, when exchanges between the Parties with a view to address the matter in paragraph 1 are undertaken, including within the Trade Committee.

3. The Party which has made a finding referred to in paragraph 2 shall, without undue delay, notify the Trade Committee thereof and enter into consultations with the other Party within the Trade Committee with a view to reaching a solution acceptable to both Parties.

4. Within two months after the notification referred to in paragraph 3, the other Party may provide written comments to such finding.

5. If the Parties fail to agree on an acceptable solution within three months after the notification referred to in paragraph 3, the Party which has made the finding may decide to suspend, for a limited period of time, the relevant preferential tariff treatment of the goods concerned. The suspension shall apply only to those traders, which during consultations referred to in paragraph 3 were identified and agreed by both Parties as involved in the breaches of customs laws and regulations. Such decision to suspend shall be notified to the Trade Committee without undue delay.

6. If a Party has made a finding, and within three months after the notification referred to in paragraph 5, has established that the suspension referred to in paragraph 5 has been ineffective in combating breaches in customs laws and regulations related to the preferential treatment granted under this Chapter, that Party may decide to suspend, for a limited period of time, the relevant preferential treatment of the goods concerned. Such decision to suspend shall be notified to the Trade Committee without undue delay.

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7. The Party which has made a finding referred to in paragraph 2 may decide to suspend, for a limited period of time, the relevant preferential treatment of the goods concerned if during consultations referred to in paragraph 3, the Parties were unable to identify and agree on traders involved in the breaches of customs laws and regulations. Such decision to suspend shall be notified to the Trade Committee without undue delay.

8. The suspensions referred to in paragraphs 5, 6 and 7 shall apply only for a period necessary to protect the financial interests of the Party concerned, and no longer than six months, and may be terminated by the Party which has made the finding referred to in paragraph 2 any time before the end of the notified period. Any change in the suspension period shall be notified to the Trade Committee.

9. If the conditions referred to in paragraph 2 that gave rise to the initial suspension persist at the expiry of the period as notified to the Trade Committee, the Party concerned may decide to renew the suspension. The Party concerned shall notify the Trade Committee at the latest one month before the renewal. The renewed suspension shall be subject to periodic consultations within the Trade Committee.

10. Each Party shall publish, in accordance with its internal procedures, notices to importers about any notification and decision concerning the suspensions referred to in paragraphs 5 to 9.

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11. Notwithstanding paragraphs 3 to 9, if an importer satisfies the customs authority of the importing Party that its goods comply with the customs laws and regulations of the importing Party, the requirements of this Agreement, and any other appropriate conditions related to the suspension limited in time established by the importing Party in accordance with its laws and regulations, the importing Party shall allow the importer to apply for preferential treatment and recover any customs duties paid in excess of the applicable preferential customs duties when the goods were imported.

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ARTICLE 2.16

Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies) and 7 (Technical Barriers to Trade)

1. This Article complements and further specifies Article 24.4.

2. The Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies) and 7 (Technical Barriers to Trade) established pursuant to Article 24.4 (hereinafter referred to as the "Committee" for the purposes of this Chapter) shall consider any matter relating to the effective implementation and operation of this Chapter, Chapter 5 (Trade Remedies) and Chapter 7 (Technical Barriers to Trade).

3. The Committee shall be composed of representatives of the Union and Indonesia, including the contact points of each Party as set out in paragraph 4.

4. Each Party shall designate, within 90 days after the date of entry into force of this Agreement, a contact point responsible for facilitating communication between the Parties on matters covered by this Chapter, Chapter 5 (Trade Remedies) and Chapter 7 (Technical Barriers to Trade). Each Party shall notify the other Party promptly of any change to its contact point.

5. The Committee shall meet in accordance with Article 24.4(4).

6. The Committee shall have the following functions:

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

(b) reviewing and monitoring the implementation or operation of this Chapter and Chapter 5 (Trade Remedies);

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

(d) considering matters related to Chapter 7 (Technical Barriers to Trade) that are referred to it by the TBT Chapter Coordinators established under Article 7.11(1);

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(e) consulting on and endeavouring to resolve any issues relating to this Chapter, including differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-A (Elimination of Customs Duties) and Annex 2-B (Export Duty Quota Schedule Pursuant to Point (b) of Article 2.6(2)), or amendment to the Harmonized System Code Structure or each Party's respective nomenclatures, including methodologies and procedures used by each Party, to ensure that the obligations in Annex 2-A (Elimination of Customs Duties) and Annex 2-B (Export Duty Quota Schedule Pursuant to Point (b) of Article 2.6(2)) are not altered; consultations pursuant to this point shall not replace consultations pursuant to Chapter 22 (Dispute Settlement) or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise;

(f) monitoring preference utilisation rates and statistics, data on which may be presented for an exchange of views to the Trade Committee;

(g) where appropriate, referring matters taken under consideration to the Trade Committee, including any recommendations or conclusions; and

(h) on request of a Party, reviewing and exchanging statistical information on each Party's rates of approval and denial of import licences.

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CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

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SECTION A

RULES OF ORIGIN

ARTICLE 3.1

Definitions

For the purposes of this Chapter:

(a) "classified" refers to the classification of a product or material under a particular chapter, heading, or sub-heading of the Harmonized System;

(b) "competent authority" means:

(i) in the case of the Union, the customs authorities; and

(ii) in the case of Indonesia, the Ministry of Trade or the customs authority, as appropriate;

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

(d) "customs value" means the value as determined in accordance with the Agreement on Implementation of Article VII of GATT 1994, contained in Annex 1A to the WTO Agreement;

(e) "EXW" or "ex-works price" means:

(i) the price of the product paid or payable to the producer[1] in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs incurred in the production of the product, minus any internal taxes which are, or may be, repaid if the product obtained is exported; or

(ii) if there is no price paid or payable or if the actual price paid does not reflect all costs related to the production of the product which are actually incurred in the production of the product, the value of all the materials used and all other costs incurred in the production of the product in the exporting Party:

(A) including selling, general and administrative expenses, as well as profit, that can reasonably be allocated to the product; and

[1] For the purposes of point (i), if the last production has been contracted to a producer, the term "producer" refers to the person who has employed the subcontractor.

(B) excluding the cost of freight, insurance, all other costs incurred in transporting the product and any internal taxes of the exporting Party which are, or may be, repaid if the product obtained is exported;

(f) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of the Party, exports or produces the originating product and makes out a statement on origin;

(g) "importer" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, imports the originating product and claims preferential tariff treatment for it;

(h) "material" means any ingredient, component, part or product used in the production of another product;

(i) "preferential tariff treatment" means the rate of customs duty applicable to an originating good in accordance with Article 2.5;

(j) "product" means the result of production;

(k) "production" means any method of obtaining or processing goods, including growing, breeding, mining, extracting, raising, harvesting, gathering, collecting, fishing, trapping, hunting, capturing, manufacturing, assembling or disassembling a product; and

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(l) "value of materials" means the customs value at the time of importation of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the Union or in Indonesia.

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ARTICLE 3.2

Requirements for originating goods

1. For the purposes of applying the preferential tariff treatment by a Party to the originating goods of the other Party in accordance with this Agreement, provided that the products satisfy all other applicable requirements of this Chapter, the following products shall be considered as originating in the other Party:

(a) products which are wholly obtained in that Party pursuant to Article 3.4;

(b) products produced in that Party exclusively from originating materials in that Party; and

(c) products produced in that Party incorporating non-originating materials provided they satisfy the requirements set out in Annex 3-B (Product-Specific Rules of Origin).

2. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered as non-originating when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in Indonesia or the Union.

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ARTICLE 3.3

Cumulation of origin

1. Notwithstanding Article 3.2, products shall be considered as originating in a Party if such products are obtained there by incorporating materials originating in the other Party, provided that the working or processing carried out goes beyond the operations referred to in Article 3.6.

2. Materials originating in Japan and in third countries that are members of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN Member States") shall be considered, in accordance with Appendix 3-B-2 (Products Referred to in Article 3.3(2) for Which Materials Originating in Japan or in ASEAN Member States May Be Considered as Materials Originating in Indonesia), as materials originating in Indonesia when further processed and incorporated into one of the products listed in Appendix 3-B-2 (Products Referred to in Article 3.3(2) for Which Materials Originating in Japan or in ASEAN Member States May Be Considered as Materials Originating in Indonesia), provided that they have undergone working or processing in Indonesia which goes beyond the operations referred to in Article 3.6.

3. For the purposes of paragraph 2, the origin of the materials shall be determined according to the preferential rules of origin applicable in the framework of the Agreement between the European Union and Japan for an Economic Partnership, signed in Tokyo on 17 July 2018 and of the agreements between the Union and ASEAN Member States.

4. For the purposes of paragraph 2, the originating status of materials exported from Japan or ASEAN Member States to Indonesia to be used in further working or processing shall be established by a proof of origin under which these materials could be exported directly to the Union.

5. Statements of origin drawn up by application of paragraph 2 shall bear the following entry: "Application of Article 3.3(2) of Chapter 3 of the EU-Indonesia CEPA with XXX [Country(ies) of cumulation]".

6. Paragraphs 2 to 5 shall apply if:

(a) Japan and the ASEAN Member States apply with the Union a preferential trade agreement in accordance with Article XXIV of GATT 1994; and

(b) Japan, the ASEAN Member States and Indonesia have undertaken and notified to the Union their undertaking to:

(i) ensure compliance with the cumulation provided for by this Article;

(ii) establish a proof of origin on the originating status of materials from Japan and ASEAN Member States; and

(iii) provide the administrative cooperation necessary to ensure the correct implementation of this Chapter both within the Union and between themselves.

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ARTICLE 3.4

Wholly obtained products

1. The following shall be considered as wholly obtained in a Party:

(a) plant or plant products grown, cultivated, harvested, picked or gathered in the territory of that Party;

(b) live animals born and raised in the territory of that Party;

(c) products obtained from live animals raised in the territory of that Party;

(d) products obtained from slaughtered animals born and raised in the territory of that Party;

(e) products obtained by hunting, trapping, fishing, gathering or capturing conducted in the territory of that Party, but not beyond the outer limits of the Party's territorial sea;

(f) products obtained from aquaculture in the territory of that Party, where aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

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(g) minerals or other naturally occurring substances, other than those included in points (a) to (f), extracted or taken from the soil or the seabed not going beyond the limits of the Party's territorial sea;

(h) products of sea fishing and other products taken from the sea outside any territorial seas by their vessels;

(i) products made aboard their factory ships exclusively from products referred to in point (h);

(j) products other than fish, shellfish and other marine life extracted from the seabed or subsoil which is situated outside any territorial sea but where the Party has exploitation rights in accordance with international law;

(k) a product that is:

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

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

(l) a product produced there exclusively from products referred to in points (a) to (k), or from their derivatives.

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2. The terms "vessels" and "factory ships" in points (h) and (i) of paragraph 1 shall apply only to vessels and factory ships:

(a) which are registered in a Member State or in Indonesia;

(b) which sail under the flag of a Member State or of Indonesia; and

(c) which are owned:

(i) at least 50 % by a national of a Member State or of Indonesia; or

(ii) by juridical persons:

(A) which have their head office and their main place of business in a Member State or Indonesia; and

(B) which are at least 50 % owned by a Member State or by Indonesia, or by a public entity or a national of one of those Parties.

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ARTICLE 3.5

Tolerances

1. If a non-originating material used in the production of a product does not satisfy the requirements set out in Annex 3-B (Product-Specific Rules of Origin), that material may be used if:

(a) for a product classified under Chapters 2 and 4 to 24 of the Harmonized System, other than processed fishery products of Chapter 16, the total value of those materials does not exceed 10 % of the ex-works price of the product;

(b) for a product classified under Chapter 1, Chapter 3, processed fishery products of Chapter 16, Chapters 25 to 49 or Chapters 64 to 97 of the Harmonized System, the total value of those materials does not exceed 15 % of the ex-works price of the product; or

(c) for a product classified under Chapters 50 to 63 of the Harmonized System, tolerance shall apply as stipulated in Note 7 and 8 of Annex 3-A (Introductory Notes to the List in Annex 3-B (Product-Specific Rules of Origin)).

2. Paragraph 1 shall not apply if the total value or weight of non-originating materials exceeds any of the percentage specified in Annex 3-B (Product-Specific Rules of Origin).

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3. Paragraph 1 shall not apply to products that meet the requirements of Article 3.4(1). If Annex 3-B (Product-Specific Rules of Origin) requires that the materials used in the production of that product meet the requirements of Article 3.4(1), the tolerance provided for in paragraph 1 applies to the sum of these materials.

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ARTICLE 3.6

Insufficient working or processing

1. By way of derogation from point (c) of Article 3.2(1), a product shall not be considered as originating in a Party if the working or processing carried out in that Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking and assembly of packages;

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

(d) ironing or pressing of textiles and textile articles;

(e) simple painting and polishing operations;

(f) husking and partial or total milling of rice or polishing and glazing of cereals and rice;

(g) colouring or flavouring sugar or form sugar lumps or partial or total milling of crystal sugar;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) simple sifting, screening, sorting, classifying, grading, matching, including the making-up of sets of articles;

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

(l) affixing or printing marks, labels, logos and other distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds or mixing of sugar with any material;

(n) simple addition of water or dilution or dehydration or denaturation of products;

(o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts; and

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(p) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.

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ARTICLE 3.7

Unit of qualification

1. The unit of qualification for the application of this Chapter shall be the particular product which is considered as the basic unit when determining classification according to the nomenclature of the Harmonized System.

2. When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual item shall be taken into account for the purposes of applying this Chapter.

ARTICLE 3.8

Accessories, spare parts, tools and instructional or other information materials

1. This Article applies to accessories, spare parts, tools, and instructional or other information materials if:

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

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

2. If the product is originating in accordance with Article 3.4(1), or if the product satisfies a process or change in tariff classification requirement as set out in Annex 3-B (Product-Specific Rules of Origin), accessories, spare parts, tools and instructional or other information materials as described in paragraph 1 shall be disregarded.

3. In determining whether a product meets a value requirement set out in Annex 3-B (Product-Specific Rules of Origin), the value of accessories, spare parts, tools and instructional or other information materials as described in paragraph 1, shall be taken into account in calculating the value requirement of the product as originating or non-originating materials, as the case may be.

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4. A product's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 1, shall have the originating status of the product with which they are delivered.

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ARTICLE 3.9

Sets

A set, as defined in General Rule 3 of the Harmonized System, shall be considered as originating when all component products are originating. If a set is composed of originating and non-originating components the set as a whole shall be considered as originating, provided that the value of the non-originating components does not exceed 20 % of the ex-works price of the set.

ARTICLE 3.10

Neutral materials and elements

In order to determine whether a product qualifies as an originating product of a Party, the origin of the following elements shall be disregarded:

(a) energy and fuel;

(b) plant and equipment, including materials used and to be used for their maintenance;

(c) machines and tools and dies and moulds;

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

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

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

(g) equipment, devices and supplies used for testing or inspecting the materials or product; catalyst and solvent; and

(h) other materials which are not incorporated into the final composition of the product but whose use in the production of the product can be reasonably demonstrated to be a part of that production.

PUBLIC

ARTICLE 3.11

Accounting segregation

1. Originating and non-originating fungible materials shall be physically segregated, during storage in order to maintain their originating status.

2. For the purposes of this Article, "fungible materials" means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.

3. Notwithstanding paragraph 1, originating and non-originating fungible materials may be used in the working or processing of a product without being physically segregated provided that an accounting segregation method is used.

4. The application of the accounting segregation method for managing stock provided for in paragraph 3 shall be applied in conformity with an inventory management method under accounting principles which are generally accepted in the Party.

5. A Party may require that the use of the accounting segregation method pursuant to paragraph 3 is subject to prior authorisation by the competent authority of that Party. The competent authority may grant the authorisation subject to any conditions deemed appropriate. The competent authority shall monitor the use of the authorisation and may withdraw it at any time if the beneficiary makes improper use of it or fails to fulfil any of the other conditions in this Chapter.

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6. The accounting segregation method shall ensure that at any time no more materials receive originating status than would be the case if the materials had been physically segregated.

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ARTICLE 3.12

Packing materials and containers for retail sale

1. Packaging materials and containers in which a product is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the product have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 3-B (Product-Specific Rules of Origin) or whether the good meets the requirements of Article 3.4(1).

2. If a product is subject to a value requirement set out in Annex 3-B (Product-Specific Rules of Origin), the value of the packaging materials and containers in which the product is packaged for retail sale, if classified with the good, shall be taken into account as originating or non-originating, as the case may be, in calculating the value requirement of the product.

ARTICLE 3.13

Packing materials and containers for shipment

Packing materials and containers for shipment that are used to protect a good during transportation shall be disregarded in determining whether a product is originating.

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ARTICLE 3.14

Non-alteration

1. An originating product declared for importation in a Party shall be the same product as exported from the other Party in which it obtained originating status. It shall not have been altered, transformed in any way or subjected to operation other than to preserve it in good condition or other than by adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific requirements of the importing Party, prior to being declared for importation in a Party.

2. The storage or exhibition of products may take place in a third country provided that they remain under customs supervision in that third country.

3. Without prejudice to the provisions of Article 3.24, the splitting of consignments may take place in the territory of a third country if carried out by the exporter or under its responsibility provided the consignments remain under customs supervision in the third country.

4. If the customs authority of the importing Party has reason to believe that the conditions set out in paragraphs 1, 2 or 3 are not complied with, it may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.

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ARTICLE 3.15

Returned product

If an originating product exported from a Party to a third country returns to the originating country, it shall be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authority that the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation beyond that necessary to preserve it in good condition while in that third country or while being exported.

SECTION B

ORIGIN PROCEDURES

PUBLIC

ARTICLE 3.16

Claim for preferential tariff treatment

1. The importing Party shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirement provided for in this Chapter.

2. A claim for preferential tariff treatment shall be based on a statement on origin, declaring that the product is originating, drawn up by the exporter.

3. Notwithstanding paragraph 2, a Party may allow in accordance with its laws and regulations a claim for preferential tariff treatment to be based on the importer's knowledge that the product is originating in accordance with Article 3.20.

4. The importer making a claim for preferential tariff treatment based on a statement on origin referred to in paragraph 2 shall keep the statement on origin and provide such statement or a copy thereof to the customs authority of the importing Party in accordance with its laws and regulations.

ARTICLE 3.17

Timing of the claim for preferential tariff treatment

1. The claim for preferential tariff treatment, and its basis as referred to in Article 3.16(2) and (3), shall be included in the customs declaration at the time of importation, in accordance with the laws and regulations of the importing Party.

2. Notwithstanding paragraph 1, if the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid or release guarantee, provided that:

(a) the claim for preferential tariff treatment is made within the time period specified in the laws and regulations of the importing Party;

(b) the importer provides the basis for the claim as referred to in Article 3.16(2) and (3); and

(c) the product would have been considered originating within the meaning of this Chapter if preferential tariff treatment had been claimed by the importer at the time of importation.

3. Without prejudice to paragraph 2, the obligations applicable to the importer pursuant to Article 3.16 shall apply for the purposes of this paragraph.

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4. Paragraph 2 shall apply under the condition that Indonesia has notified the Union that the laws and regulations in Indonesia allow the granting of preferential tariff treatment and the repayment or remission of any excess customs duty paid after importation.

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ARTICLE 3.18

Statement on origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating from a Party, including, if applicable, information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin made out and the information provided.

2. A statement on origin shall be made out in one or more of the linguistic versions included in Annex 3-C (Text of the Statement on Origin), at least one of which shall be English, on an invoice, or on any other document describing the originating product in sufficient detail to enable its identification. The importing Party shall not require the importer to submit a translation of the statement on origin. The Union shall notify any other linguistic version of the statement on origin to Indonesia at the latest on the accession of a new Member State to the Union.

3. A statement on origin shall be valid for 12 months from the date it was made out.

4. A statement on origin shall apply to a single shipment of one or more products into a Party. The customs authority of the importing Party may allow the application of a statement on origin to multiple shipments of identical originating products that take place within a period of time that does not exceed 12 months as set out by the exporter in that statement.

5. The importing Party shall, at the request of the importer and subject to requirements and conditions provided by the Party, allow a single statement on origin to be used for unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XVI and XVII or headings 7308 and 9406 of the Harmonized System when imported in instalments.

6. Paragraph 4 shall apply under the condition that Indonesia has notified the Union that the laws and regulations in Indonesia allow the application of a statement on origin to multiple shipments of identical originating products.

ARTICLE 3.19

Discrepancies and minor errors

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin.

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ARTICLE 3.20

Importer's knowledge

The importer's knowledge that a product is originating shall be based on information demonstrating that the product is originating within the meaning of this Chapter.

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ARTICLE 3.21

Record keeping requirements

1. An importer claiming preferential tariff treatment for a product imported into a Party shall:

(a) if the claim is based on a statement on origin, keep the statement on origin or a copy of the statement on origin made out by the exporter for a minimum of three years from the date of the claim for preferential tariff treatment, unless a longer period is required by a Party's laws and regulations; and

(b) if the claim is based on the importer's knowledge, keep the information demonstrating that the product satisfies the requirements to obtain originating status for a minimum of three years from the date of the claim for preferential tariff treatment, unless a longer period is required by a Party's laws and regulations.

2. An exporter who made out a statement on origin shall, for a minimum of four years following the drawing up of that statement on origin, unless a longer period is required by a Party's laws and regulations, keep copies of statement on origins and all other records demonstrating that the product satisfies the requirements to obtain originating status.

3. The records to be kept pursuant to this Article may be held in electronic format.

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ARTICLE 3.22

Small consignments

1. Notwithstanding Articles 3.16 to 3.20, the importing Party shall grant preferential tariff treatment to:

(a) a product sent in a small package from a private person to a private person; and

(b) a product forming part of a traveller's personal luggage;

provided the product has been declared as meeting the requirements of this Chapter, and the customs authority of the importing Party has no doubts as to the veracity of such declaration.

2. The following products are excluded from the application of paragraph 1:

(a) a product imported by way of trade; for greater clarity, imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that the products have no commercial purpose;

(b) products whose importation forms part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article 3.16; and

(c) products for which the total value exceeds the limits set under the relevant laws and regulations of a Party.

3. Each Party shall notify the limits referred to in point (c) of paragraph 2 and any subsequent modification thereof to the other Party. For the Union, the European Commission shall be responsible for those notifications.

4. The importer shall be responsible for the correctness of the declaration and for compliance with the requirements of this Chapter. The record-keeping requirements set out in Article 3.21 shall not apply to the importer under this Article.

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ARTICLE 3.23

Verification

1. The customs authority of the importing Party may conduct a verification as to whether a product is originating or the other requirements of this Chapter are met based on risk assessment methods, which may include random selection. Such verification may be conducted by means of a request for information to the importer who made the claim referred to in Article 3.16, at the time the import declaration is submitted, before the release of the products, or after the release of the products.

2. The information requested pursuant to paragraph 1 shall not cover more than:

(a) the statement on origin referred to in Article 3.16(2), where such a statement was the basis of the claim;

(b) information pertaining to the fulfilment of origin criteria, that:

(i) for products meeting the requirements of Article 3.4(1): the applicable category (such as harvesting, mining, fishing) and place of production;

(ii) if the origin criterion is based on change of tariff classification: a list of all the non-originating materials including their tariff classification (in two-, four- or six-digit format, depending on the origin criterion);

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(iii) if the origin criterion is based on a value method: the value of the final product as well as the value of all the non-originating materials used in the production of that final product;

(iv) if the origin criterion is based on weight: the weight of the final product as well as the weight of the relevant non-originating materials used in that final product; and

(v) if the origin criterion is based on a specific production process: a specific description of that process; and

(c) information relating to compliance with Article 3.14.

3. When providing the requested information, the importer may add any other information that they consider relevant for the purpose of verification.

4. If the claim for preferential tariff treatment is based on a statement on origin, the importer shall provide that statement on origin but may reply to the customs authority of the importing Party that the importer is not in a position to provide the information referred to in point (b) of paragraph 2.

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5. Where the claim for preferential tariff treatment is based on the importer's knowledge referred to in Article 3.16(3), after having first requested information pursuant to paragraph 1, the customs authority of the importing Party conducting the verification may send a request for information to the importer when it considers that additional information is required for verifying the originating status of the product or whether the other requirements of this Chapter are met. The customs authority of the importing Party may request the importer for specific documentation and information, where appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer. As a condition for such release, the Party may require payment of applied most-favoured-nation customs duties, a guarantee or other appropriate precautionary measure. Any suspension of preferential tariff treatment shall be terminated and preferential tariff treatment shall be granted as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned, or the fulfilment of the other requirements of this Chapter.

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ARTICLE 3.24

Administrative cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate with each other, through their respective competent authority, to verify whether products are originating and whether the other requirements provided for in this Chapter are met.

2. Where the claim for preferential tariff treatment is based on a statement on origin referred to in Article 3.16(2), the customs authority of the importing Party conducting the verification may request documentation or information to the competent authority of the exporting Party within two years from the date of the claim for preferential tariff treatment, when the customs authority of the importing Party conducting the verification considers that it requires information additional to the information provided by the importer for verifying the originating status of the product or whether the other requirements provided for in this Chapter are met.

3. If a request is made pursuant to paragraph 2, the customs authority of the importing Party shall include the following information:

(a) the statement on origin;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter;

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(d) the subject and scope of the verification; and

(e) where applicable, any relevant documentation.

In addition, the customs authority of the importing Party may request the competent authority of the exporting Party to provide specific documentation and information.

4. The competent authority of the exporting Party may, in accordance with its laws and regulations, request documentation or examination by calling for any evidence, or visit the premises of the exporter to review records and observe the facilities used in the production of the product.

5. The competent authority of the exporting Party, following the request referred to in paragraph 2, shall provide the following information:

(a) the requested documentation, where available;

(b) an opinion on the originating status of the product;

(c) the description of the product subject to examination and the tariff classification relevant to the application of the rules of origin;

(d) a description and explanation of the production process to support the originating status of the product;

(e) information on the manner in which the examination was conducted; and

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(f) any relevant supporting documentation.

6. The competent authority of the exporting Party shall not transmit the information referred to in paragraph 5 to the customs authority of the importing Party before having received the consent of the exporter.

7. The Parties shall provide each other, through the Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation) and 12 (Intellectual Property) for issues related to border enforcement (hereinafter referred to as the "Committee" for the purposes of this Chapter), the contact details of their respective competent authorities and any modification thereof within 30 days after such modification.

ARTICLE 3.25

Denial of preferential tariff treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment if:

(a) within three months or a shorter period in accordance with the laws and regulations of the importing Party, following the request for information pursuant to Article 3.23(1):

(i) no reply is provided by the importer;

(ii) if the claim for preferential tariff treatment is based on a statement on origin, the statement on origin is not provided, unless the statement on origin has already been provided pursuant to Article 3.18(5); or

(iii) if the claim for preferential tariff treatment is based on the importer's knowledge in accordance with Article 3.20, the information provided by the importer is inadequate to confirm that the product is originating in a Party;

(b) within three months following the request for additional information pursuant to Article 3.23(5):

(i) the importer did not provide a reply; or

(ii) the information provided by the importer is inadequate to confirm that the product is originating in a Party;

(c) within 10 months following the request for information pursuant to Article 3.24(2):

(i) the competent authority of the exporting Party did not provide a reply; or

(ii) the information provided by the competent authority of the exporting Party is inadequate to confirm that the product is originating.

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2. The customs authority of the importing Party may deny preferential tariff treatment to a product if the importer fails to comply with requirements in Article 3.14.

3. If the customs authority of the exporting Party provided an opinion pursuant to point (b) of Article 3.24(5) confirming the originating status of the products, but the customs authorities of the importing Party has sufficient justification to deny preferential tariff treatment, the customs authority of the importing Party shall send to the customs authority of the exporting Party a copy of its decision to deny the preference.

PUBLIC

ARTICLE 3.26

Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it by the other Party pursuant to this Chapter and shall protect that information from disclosure.

2. Information obtained by the authority of the importing Party pursuant to this Chapter may only be used by that authority for the purposes of this Chapter. Information collected pursuant to this Chapter shall be allowed to be used for the purposes of any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with this Chapter if the person or Party who provided the information is notified in advance.

3. Confidential business information obtained from the exporter by the competent authority of the exporting Party or by customs authority of the importing Party pursuant to Articles 3.23 and 3.24 shall not be disclosed unless otherwise provided for in this Chapter.

4. Information obtained by the customs authority of the importing Party pursuant to this Chapter shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is granted to the importing Party on its request through the diplomatic channels or other channels established in accordance with the laws and regulations of the exporting Party.

PUBLIC

ARTICLE 3.27

Administrative measures and sanctions

Each Party shall ensure that administrative measures, and sanctions where appropriate, may be imposed in accordance with its respective laws and regulations on a person who draws up a document, or causes a document to be drawn up, which contains incorrect information provided for the purpose of obtaining a preferential tariff treatment to a product, who does not comply with the requirements of Article 3.21, or who does not provide the evidence requested or refuses a visit referred to in Article 3.24(4).

SECTION C

FINAL PROVISIONS

PUBLIC

ARTICLE 3.28

Ceuta and Melilla

1. For the purposes of this Chapter, the term "Union" does not include Ceuta and Melilla.

2. Products originating in Indonesia, when imported into Ceuta and Melilla, shall in all respects be subject to the same customs regime, including preferential tariff treatment, as it applies to products originating in the customs territory of the Union pursuant to Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities.

3. Indonesia shall apply to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime, including preferential tariff treatment, as it applies to products imported from and originating in the Union.

4. The rules of origin applicable to Indonesia under this Chapter shall apply in determining the origin of products exported from Indonesia to Ceuta and Melilla. The rules of origin applicable to the Union under this Chapter shall apply in determining the origin of products exported from Ceuta and Melilla to Indonesia.

5. The provisions on cumulation of origin of this Chapter shall apply to the import and export of products between the Union, Indonesia and Ceuta and Melilla.

6. Ceuta and Melilla shall be considered as a single territory.

7. The Spanish customs authority shall be responsible for the application of this Chapter in Ceuta and Melilla.

PUBLIC

ARTICLE 3.29

Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters meeting in its specific configuration for Chapter 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation) and 12 (Intellectual Property)

1. This Article complements and further specifies Article 24.4.

2. The Committee shall be responsible for the effective implementation and operation of this Chapter and shall have the following functions for the purposes of this Chapter:

(a) reviewing and making appropriate recommendations, as necessary, to the Trade Committee on:

(i) the implementation and operation of this Chapter; and

(ii) any amendments, pursuant to Article 24.2, of the provisions of this Chapter and Annex 3-A (Introductory Notes to the list in Annex 3-B (Product-Specific Rules of Origin)), Annex 3-B (Product-Specific Rules of Origin) including its Appendices, Annex 3-C (Text of the Statement on Origin), Annex 3-D (Explanatory Notes), Annex 3-E (On the Principality of Andorra) and Annex 3-F (On the Republic of San Marino), proposed by a Party;

(b) adopting by decision explanatory notes pursuant to Article 3.30; and

(c) considering any other matter related to this Chapter as the representatives of the Parties may agree.

PUBLIC

ARTICLE 3.30

Explanatory notes

The Parties may agree by decision on explanatory notes regarding the interpretation and application of this Chapter within the Committee.

PUBLIC

ARTICLE 3.31

Transitional provisions for products in transit or storage

The Parties may apply this Agreement to products which comply with this Chapter and which on the date of entry into force of this Agreement are either in transit from the exporting Party to the importing Party, or under customs control in the importing Party, without payment of import duties and taxes, if the importer submits a claim for preferential tariff treatment in accordance with Article 3.16 to the customs authority of the importing Party, within 12 months after the date of entry into force of this Agreement.

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

PUBLIC

ARTICLE 4.1

Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. Each Party shall reinforce cooperation in this area with a view to ensuring that the relevant customs laws and regulations and procedures, as well as the administrative capacity of the customs administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs controls. This may involve the following actions:

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

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

(c) simplifying their customs procedures and harmonising them with relevant international standards, to the extent possible; and

(d) promoting cooperation between their respective customs authorities.

2. The Parties agree that their laws and regulations shall be non-discriminatory and that customs procedures shall be based on the use of efficient methods and effective controls to combat fraud and to promote legitimate trade.

3. The Parties recognise that legitimate public policy objectives, including in relation to security, safety and the fight against fraud as set out in Chapter 23, shall not be compromised.

PUBLIC

ARTICLE 4.2

Scope

This Chapter shall apply to matters relating to the Parties' customs and other trade-related laws and regulations enforced by customs, including their application to goods traded between the Parties, as well as to the cooperation between the Parties on customs matters.

ARTICLE 4.3

Definitions

For the purposes of this Chapter, "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of GATT 1994, contained in Annex 1A to the WTO Agreement.

ARTICLE 4.4

Customs cooperation and mutual administrative assistance

1. The Parties shall cooperate on customs matters between their respective authorities, as deemed appropriate, to ensure that the objectives set out in Article 4.1 are attained including through:

(a) exchanging information concerning customs laws and regulations, their implementation and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) enforcement of intellectual property rights by their respective customs authorities, and the fight against illicit trade;

(iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management;

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(b) working together on the customs-related aspects of securing and facilitating international trade supply chains in accordance with relevant best practices, standards and techniques, in particular those developed by the World Customs Organization (hereinafter referred to as "WCO") insofar as they have been ratified or adopted by the Parties;

(c) considering initiatives on best practices and techniques relating to customs matters, including technical assistance, efforts towards the simplification and harmonisation of customs procedures, as well as on providing effective services to the business community;

(d) developing cooperation in areas of mutual interest in the field of customs in international organisations such as the WTO and the WCO;

(e) establishing, where relevant and appropriate, mutual recognition of trade partnership programmes and customs controls, including equivalent trade facilitation measures;

(f) exchanging, where relevant and appropriate, through a structured and recurrent communication between the customs authorities of the Parties, certain categories of customs-related information for the purpose of improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collection or safety and security, and facilitating legitimate trade; such exchanges shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the Protocol on Mutual Administrative Assistance in Customs Matters;

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(g) fostering, where relevant and appropriate, cooperation between customs authorities and other government authorities on authorised operator programmes; this collaboration may be achieved, among others, by aligning requirements, facilitating access to benefits and minimising unnecessary duplications; and

(h) such other issues as the Parties may mutually determine.

2. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of the Protocol on Mutual Administrative Assistance in Customs Matters.

PUBLIC

ARTICLE 4.5

Customs laws and regulations and customs procedures

1. Each Party shall ensure that its customs procedures as well as the implementation thereof, are predictable, consistent, transparent, trade-facilitating while ensuring effective controls, and based on:

(a) international instruments and standards applicable in the area of customs and trade, notably those concluded in the context of the WTO and the WCO, and compliant with, to the extent permitted by its customs laws and regulations, the recommended practices of the WCO;

(b) customs laws and regulations and the implementation thereof that:

(i) are proportionate and non-discriminatory;

(ii) avoid unnecessary burdens on economic operators;

(iii) provide further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods; and

(iv) ensure safeguards against fraud and illicit or damaging activities; and

(c) rules that ensure that any penalty imposed for breaches of customs laws and regulations or procedural requirements is proportionate and non-discriminatory and that their application does not unduly delay the release of the goods.

2. Each Party should periodically review its customs laws and regulations and customs procedures with a view to their simplification to facilitate trade and ensure effective controls.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of its operations, each Party shall:

(a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods; and

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(b) work towards the further simplification and standardisation of data and documentation required by customs authorities and other agencies.

PUBLIC

ARTICLE 4.6

Release of goods

1. Each Party shall adopt or maintain customs procedures that provide for goods to be released as rapidly as possible within a period that is no longer than necessary to ensure compliance with its laws and regulations. Each Party shall work to further reduce release times and shall release the goods without undue delay. Notwithstanding the first sentence of this paragraph, each Party may require additional time to ensure compliance with its laws and regulations if one of the following situations arises:

(a) the importer fails to provide any information required by the importing Party at the time of first entry;

(b) the information contains an error;

(c) the goods are selected for closer examination by the customs authorities of the importing Party through the application of a risk management system for customs control; or

(d) due to *force majeure*, the necessary customs procedures could not be completed without undue delay or the release of the goods is otherwise delayed.

2. If any goods are selected for closer examination in accordance with point (c) of paragraph 1, the closer examination shall be limited to what is reasonable and necessary, and conducted and completed without undue delay.

3. Each Party shall provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods upon arrival, provided that the necessary conditions for the release of the goods are fulfilled.

4. Each Party shall adopt or maintain customs procedures that allow for the release of goods prior to the final determination of the applicable customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

5. As a condition for the release of goods prior to a final determination, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its customs laws and regulations. Such guarantee shall not be greater than the amount that Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

PUBLIC

ARTICLE 4.7

Simplified customs procedures

Each Party shall provide for simplified customs procedures that are transparent and efficient in order to reduce costs and increase predictability for economic operators, including for SMEs.

PUBLIC

ARTICLE 4.8

Transit and transhipment

1. Each Party shall ensure the facilitation and effective control of transhipment operations and transit movements through its territory.

2. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade.

3. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in its territory to facilitate transit.

4. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 4.9

Risk management

1. Each Party shall adopt or maintain a risk management system for customs control.

2. Each Party shall design and apply risk management so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall concentrate customs control and, to the extent possible, other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

ARTICLE 4.10

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audits to ensure compliance with customs and other related laws and regulations.

PUBLIC

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. If a person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in post-clearance audits may be used in further administrative or judicial proceedings.

4. Each Party shall, wherever practicable, use the results of post-clearance audits in applying risk management.

ARTICLE 4.11

Authorised operators

1. Each Party shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 3, to operators who meet specified criteria (hereinafter referred to as "authorised operators"). Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and, in this case not required to establish a separate scheme.

PUBLIC

2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, with requirements specified in the respective laws, regulations or procedures of each Party. The specified criteria, which shall be published, may include:

(a) an appropriate record of compliance with customs and other related laws and regulations;

(b) a system of managing records to allow for necessary internal controls;

(c) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(d) supply chain security.

3. The specified criteria to qualify as an authorised operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and, to the extent possible, shall allow the participation of SMEs.

4. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures:

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

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

PUBLIC

(c) rapid release time, as appropriate;

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

(e) use of comprehensive guarantees or reduced guarantees;

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

(g) clearance of goods at the premises of the authorised operator or another place authorised by customs;

(h) prior notification in case of selection for physical or other customs control; and

(i) priority treatment if selected for control.

5. Each Party is encouraged to develop authorised operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

PUBLIC

ARTICLE 4.12

Publication and availability of information

PUBLIC

1. Each Party shall promptly publish the following information in a non-discriminatory and easily accessible manner:

(a) relevant notices of an administrative nature;

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

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

(d) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

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

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

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

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

(i) appeal procedures;

(j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(k) procedures relating to the administration of tariff quotas; and

(l) hours of operation and operating procedures for customs offices at ports, airports and border crossing points.

2. Each Party shall, to the extent possible, ensure there is a reasonable time period between the publication of new or amended laws and regulations, customs procedures, or fees or charges, and their respective dates of entry into force.

3. Each Party shall make available online, and update to the extent possible and appropriate, the following:

(a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed for import and export, and for transit;

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and

PUBLIC

(c) contact information on CEPA contact points established pursuant to Article 24.6.

PUBLIC

ARTICLE 4.13

Enquiry points

Each Party shall, within its available resources, establish or maintain one or more enquiry points to answer, within a reasonable time, reasonable enquiries of the other Party, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries.

ARTICLE 4.14

Advance rulings

1. Each Party, through its customs authorities, shall issue advance rulings upon application by economic operators setting out the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing or in electronic format within a reasonable period of time and shall contain all necessary information in accordance with the laws and regulations of the issuing Party.

2. Advance rulings shall be valid for a period of at least three years from the date of issuance or such other period as specified in the ruling, unless the ruling is no longer in accordance with the issuing Party's laws and regulations, or the facts or circumstances supporting the original ruling have changed.

3. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall notify the applicant in writing, setting out the relevant facts and the basis for its decision.

4. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

5. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party may only revoke, modify, invalidate or annul an advance ruling with retroactive effect if the ruling was based on incomplete, incorrect, false or misleading information.

PUBLIC

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

7. Each Party shall provide, upon written request from the applicant, a review of the advance ruling or of the decision to revoke, modify, invalidate or annul it.

8. Each Party shall, to the extent practicable, make publicly available information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect personal and commercially confidential information.

9. Advance rulings shall be issued in accordance with the laws and regulations of the issuing Party, and with regard to:

(a) the tariff classification of goods;

(b) the origin of goods; and

(c) any other matter the Parties may agree upon.

PUBLIC

ARTICLE 4.15

Fees and charges

The following requirements shall apply in conjunction with the requirements of Article 2.7:

(a) the Parties' customs authorities shall not impose fees and charges for the performance of customs controls or any other application of their customs laws and regulations during the official opening hours of their competent customs offices; or

(b) the Parties' customs authorities may impose fees and charges or recover costs where specific services are rendered, as provided in the relevant Party's laws and regulations and procedures.

ARTICLE 4.16

Customs brokers

A Party shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. Each Party shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

PUBLIC

ARTICLE 4.17

Customs valuation

Each Party shall determine the customs value of goods of the other Party imported into its territory in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. To this end, Article VII of GATT 1994, including its Notes and Supplementary Provisions, and Articles 1 to 17 of the Customs Valuation Agreement, including its Interpretative Notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

PUBLIC

ARTICLE 4.18

Preshipment inspections

A Party shall not require the mandatory use of preshipment inspections as defined in the Agreement on Preshipment Inspection, contained in Annex 1A to the WTO Agreement, or any other inspection activity performed at destination, before customs clearance, by private companies.[1]

[1] This Article is without prejudice to inspections carried out pursuant to provisions and procedures other than customs under the Agreement on Preshipment Inspection, contained in Annex 1A to the WTO Agreement.

ARTICLE 4.19

Review and appeal

1. Each Party shall, in accordance with its laws and regulations, provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of review and appeal against administrative actions, rulings and decisions of customs authorities.

2. Each Party shall ensure that any person with respect to whom it takes an administrative action or issues a ruling or decision, as applicable, has the right, within that Party's territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that took the administrative action or issued the ruling or decision;

(b) a judicial appeal or review of the administrative action, ruling or decision.

3. The laws and regulations of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

4. Each Party shall ensure that its procedures for an administrative or judicial appeal or review are carried out in a non-discriminatory manner.

PUBLIC

5. Each Party shall ensure that, in cases where the decision on administrative appeal or review pursuant to point (a) of paragraph 2 is not issued within the period of time provided for in its laws or regulations or not issued without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority in accordance with the laws and regulations of that Party.

6. Each Party shall ensure that the person referred to in paragraph 2 is provided with the reasons for the administrative action, ruling or decision, as applicable, so as to enable that person to have recourse to procedures for appeal or review where necessary.

PUBLIC

ARTICLE 4.20

Relations with the business community

1. Each Party shall, to the extent possible and in accordance with its laws and regulations, provide for regular consultations between its administration and the business community on legislative proposals and general procedures related to customs and trade facilitation issues.

2. Each Party shall ensure that its respective customs and related requirements and procedures continue to meet the needs of the business community, follow best practices, and remain as least trade-restrictive as possible.

ARTICLE 4.21

Temporary admission

1. For the purposes of this Chapter, the term "temporary admission" means the customs procedure under which certain goods, including means of transport, can be brought into the territory of a Party with conditional relief from payment of import duties and taxes and without application of import prohibitions or restrictions of an economic character, provided that the goods are imported for a specific purpose and intended for re-exportation within a specified period without having undergone any change, except normal depreciation, due to the use made of them in the territory of the Party into which they are brought.

2. Each Party shall grant temporary admission, as provided for in paragraph 1, among others, to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events;

(b) professional equipment;

(c) containers, pallets, packings, samples and other goods imported in connection with a commercial operation;

(d) goods imported in connection with a manufacturing operation;

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(e) goods imported for educational, scientific or cultural purposes;

(f) travellers' personal effects and goods imported for sports purposes;

(g) tourist publicity material;

(h) goods imported for humanitarian purposes;

(i) means of transport; and

(j) animals imported for specific purposes.

PUBLIC

ARTICLE 4.22

Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation) and 12 (Intellectual Property)

1. This Article complements and further specifies Article 24.4.

2. The Committee on Trade in Goods, on Customs Matters, and on Sanitary and Phytosanitary Matters in its specific configuration for Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation) and 12 (Intellectual Property) for issues related to border enforcement established pursuant to Article 24.4 (hereinafter referred to as the "Committee" for the purposes of this Chapter) shall consist of representatives of the customs and other competent authorities of the Parties. The Committee shall ensure the proper functioning of this Chapter, the enforcement of intellectual property rights by customs in Section D (Border Enforcement) of Chapter 12 (Intellectual Property), Chapter 3 (Rules of Origin and Origin Procedures), the Protocol on Mutual Administrative Assistance in Customs Matters and any additional customs-related provisions agreed between the Parties, and examine all issues arising from their application.

3. The functions of the Committee shall include:

(a) monitoring the implementation and administration of this Chapter and of Chapter 3 (Rules of Origin and Origin Procedures);

(b) providing a forum to consult and discuss all issues concerning customs, including in particular customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters and also relating to rules of origin and administrative cooperation; and

PUBLIC

(c) enhancing cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.

4. The Committee may adopt decisions in relation to the areas referred to in point (a) of Article 4.4(1), including, where it considers it necessary, for the purposes of implementing points (e) and (f) of paragraph 1 of that Article.

5. Parties may agree to hold ad hoc meetings of the Committee for the purposes of customs cooperation, rules of origin or mutual administrative assistance.

PUBLIC

CHAPTER 5

TRADE REMEDIES

PUBLIC

SECTION A

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 5.1

General provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement. The anti-dumping and countervailing measures shall be used in full compliance with all relevant WTO requirements and shall be based on a fair and transparent system in full respect of the Parties' interests and rights of defence.

2. For the purposes of this Section, the preferential rules of origin under Chapter 3 (Rules of Origin and Origin Procedures) shall not apply to anti-dumping and countervailing measures.

ARTICLE 5.2

Notification and consultation

PUBLIC

1. Upon receipt by a Party's investigating authority of a properly documented anti-dumping application with respect to imports from the other Party and to the extent possible at least seven days before initiating an anti-dumping investigation, the Party shall provide written notification to the other Party of its receipt of the application.

2. Upon receipt by a Party's investigating authority of a properly documented countervailing application with respect to imports from other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application. That notification shall normally take place at least 14 days before the date of initiation and include an invitation for consultations on the application.

3. If as part of their investigation with respect to imports from the other Party the investigating authority of a Party determines to conduct an on-site verification of information provided by the respondent[1], they shall endeavour to notify that respondent as soon as possible.

[1] For the purposes of this paragraph, "respondent" means a producer, manufacturer, exporter, importer, and, where appropriate, a government or government entity of a Party, that is required by the other Party's investigating authority to respond to an anti-dumping or countervailing measures questionnaire.

4. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after any imposition of provisional measures and in any case before a final determination is made, full and meaningful disclosure to interested parties of all essential facts and considerations which form the basis for applying measures. Those disclosures shall be made in writing and allow interested parties sufficient time to make their comments.

5. The Parties affirm their rights and obligations under Annex II of the Anti-Dumping Agreement and in particular its paragraph 5, and under Articles 12.7 and 12.8 of the SCM Agreement. If an investigating authority of a Party intends to make the determination on the basis of the facts available pursuant to Article 6.8 of the Anti-Dumping Agreement or Article 12.7 of the SCM Agreement, it shall provide a reasoned and adequate explanation:

(a) that indicates the conditions under which the facts available can be used;

(b) of the information which an interested party has failed to submit to the investigating authority; and

(c) of the facts with which the investigating authority decided to replace the information referred to in point (b).

PUBLIC

ARTICLE 5.3

Investigation after termination

1. If an anti-dumping investigation in respect of goods from the other Party is terminated with a negative final determination, an investigation shall not be initiated on the same goods by the importing Party within 12 months from the date of termination of the previous investigation.

2. Each Party shall avoid initiating an anti-dumping investigation on a good originating in the other Party on which anti-dumping measures have been terminated within the previous 12 months as a result of a review.

3. Notwithstanding paragraphs 1 and 2, the investigation authority of the importing Party may initiate an investigation if the circumstances relevant to the initiation of the previous investigation have changed.

PUBLIC

ARTICLE 5.4

Review

An expiry review under Article 11.3 of the Anti-Dumping Agreement shall be initiated at an appropriate time during the final year of the period of application of the anti-dumping duties as defined in each Party's laws and regulations. Each Party shall endeavour to provide special consultations on issues arising from a subsequent expiry review investigation and to avoid applying the perpetual imposition of anti-dumping and countervailing measures.

PUBLIC

ARTICLE 5.5

Consideration of public interest

The investigating authority of a Party shall, in accordance with its laws and regulations, provide opportunities for all domestic interested parties to submit their views in writing with regard to an anti-dumping and countervailing investigation. That investigating authority or other relevant competent public authorities of the Party shall take into account this information in its assessment of the public interest before imposing an anti-dumping or countervailing duty.

ARTICLE 5.6

Lesser duty rule

An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and that Party shall endeavour to ensure that the amount of this duty is less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

PUBLIC

ARTICLE 5.7

Anti-circumvention

1. The investigating authority of a Party shall carry out anti-circumvention investigations in a transparent way and respect the interests and rights of defence of all interested parties concerned by the investigation.

2. The investigating authority conducting an anti-circumvention investigation shall, on request of the other Party, provide it with non-confidential information regarding the companies under investigation.

3. In any proceeding in which a Party determines to conduct an on-site verification in the territory of the other Party, it shall notify the investigated company at least 14 working days in advance of the inspection. The other Party's relevant authorities may participate in the on-site verification.

4. The Party conducting an anti-circumvention investigation shall, before a final determination is made, inform all interested parties in the territory of the other Party of the essential facts under consideration, which form the basis for the assessment of whether to extend the measures or to grant an exemption. All interested parties shall be provided with an adequate opportunity to comment on such assessment. Such disclosure of essential facts should take place within a reasonable period of time for the interested parties to defend their interests. Interested parties may also apply to be heard.

5. An anti-circumvention investigation shall be completed within nine months after its date of initiation.

ARTICLE 5.8

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Section.

PUBLIC

ARTICLE 5.9

Cooperation on trade remedies matters

1. The Parties shall cooperate in the form of a best practice dialogue on trade remedies between the representatives of their respective authorities responsible for trade remedies at the appropriate level.

2. The purpose of this cooperation shall be, to the extent possible, to:

(a) enhance the Parties' knowledge and understanding of each other Party's trade remedy laws, policies and practices;

(b) oversee the implementation of this Chapter;

(c) improve cooperation between the Parties' relevant trade remedies authorities;

(d) exchange information to the extent possible on issues relating to anti-dumping, subsidies and countervailing investigations and measures and to discuss other relevant topics of mutual interest as the Parties agree;

(e) develop capacity building programmes and specific training related to trade remedies laws and practices; and

PUBLIC

(f) enhance the Parties' knowledge and understanding of anti-circumvention in the implementation of anti-dumping and countervailing measures.

3. The best practice dialogue shall be conducted, as requested by either Party and when necessary.

PUBLIC

ARTICLE 5.10

Use of the English language

In order to ensure maximum efficiency in the application of the trade remedies rules under this Section, the investigating authorities of the Parties should use the English language for communications[1] in the context of trade remedies investigations between the Parties.

[1] For the purposes of this Article, "communications" means questionnaire replies, written submissions, and letters.

SECTION B

GLOBAL SAFEGUARD MEASURES

PUBLIC

ARTICLE 5.11

General provisions

1. The Parties affirm their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

2. A Party shall not apply with respect to the same good at the same time:

(a) a bilateral safeguard measure under Section C (Bilateral Safeguard Clause) of this Chapter; and

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

ARTICLE 5.12

Transparency

PUBLIC

1. Without prejudice to Article 3.2 of the Safeguards Agreement, a Party shall at the request of the other Party and provided that it has a substantial interest, promptly notify and provide to the other Party all pertinent information upon:

(a) the initiation of an investigation;

(b) any preliminary determination; and

(c) making a final finding.

2. When imposing global safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, it shall notify the other Party and give the possibility to hold consultations. If a satisfactory solution has not been reached within 30 days after the notification, the Party may adopt the definitive global safeguard measures.

ARTICLE 5.13

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Section.

PUBLIC

ARTICLE 5.14

Use of the English language

In order to ensure maximum efficiency in the application of the trade remedies rules under this Section, the investigating authorities of the Parties should use the English language for communications[1] in the context of trade remedies investigations between the Parties.

[1] For the purposes of this Article, "communications" mean written submissions and letters.

SECTION C

BILATERAL SAFEGUARD CLAUSE

PUBLIC

ARTICLE 5.15

Definitions

For the purposes of this Section:

(a) "domestic industry" shall be understood in accordance with Article 4.1(c) of the Safeguards Agreement; to this end, Article 4.1(c) is incorporated into and made part of this Agreement, *mutatis mutandis*;

(b) "serious injury" and "threat of serious injury" shall be understood in accordance with Article 4.1(a) and (b) of the Safeguards Agreement; to this end, Article 4.1(a) and (b) is incorporated into and made part of this Agreement, *mutatis mutandis*; and

(c) "transition period" means a period of 10 years from the date of entry into force of this Agreement for products being liberalised in less than 10 years; for all products being liberalised in 10 years or more, the transition period shall be the liberalisation period plus three years.

ARTICLE 5.16

Application of a bilateral safeguard measure

1. During the transition period, the importing Party may apply the measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section, except as otherwise provided under point (c) of Article 5.17(5) if, as a result of the reduction or elimination of a customs duty under this Agreement, any good originating in the territory of the other Party is being imported into its territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to its domestic industry producing like or directly competitive goods.

2. The importing Party may apply a bilateral safeguard measure which:

(a) suspends further reduction of the rate of customs duty on the good concerned provided for under Chapter 2 (National Treatment and Market Access for Goods); or

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

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

(ii) the base rate of customs duty specified in the Schedules included in Annex 2-A (Elimination of Customs Duties) pursuant to Article 2.5.

PUBLIC

ARTICLE 5.17

Conditions and limitations

1. A Party shall notify the other Party in writing of the initiation of an investigation described in paragraph 2 and consult with the other Party before applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a bilateral safeguard measure only following an investigation by its investigating authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement. Articles 3 and 4.2(c) of the Safeguards Agreement shall apply, *mutatis mutandis*.

3. In carrying out an investigation pursuant to paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, which to this end, shall apply, *mutatis mutandis*.

4. Each Party shall ensure that its investigating authorities complete any such investigation within one year after its date of initiation.

5. A Party shall not apply a bilateral safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

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(b) for a period exceeding three years, which may be extended by up to two years, if the investigating authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and if there is evidence that the industry is adjusting, provided that the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed five years; and

(c) beyond the expiration of the transition period, except with the consent of the other Party.

6. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than three years, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

7. If a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to its Schedule included in Annex 2-A (Elimination of Customs Duties), would have been in effect in the absence of the measure.

PUBLIC

ARTICLE 5.18

Provisional measures

1. In critical circumstances where a delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis on the basis of a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry.

2. The duration of any provisional measure shall not exceed 200 days, during which time the Party applying the measure shall publish its preliminary determination and comply with the requirements of Article 5.17(3).

3. The Party applying the measure shall promptly refund any tariff increases it has applied, if the investigation described in Article 5.17(2) does not result in a determination that the requirements of Article 5.16(1) are met.

4. The duration of any provisional measure shall be counted as part of the period prescribed by point (b) of Article 5.17(5).

PUBLIC

ARTICLE 5.19

Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations pursuant to paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Party whose goods are subject to the safeguard measure may suspend the application of concessions with substantially equivalent trade effects to the safeguard measure with respect to originating goods of the Party applying a bilateral safeguard measure. The applying Party's obligation to provide compensation and the other Party's right to suspend concessions pursuant to this paragraph shall terminate on the date the safeguard measure terminates.

3. The right of suspension pursuant to paragraph 2 shall not be exercised for the first 36 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure complies with the provisions of this Agreement.

PUBLIC

ARTICLE 5.20

Use of the English language

In order to ensure maximum efficiency in the application of the trade remedies rules under this Section, the investigating authorities of the Parties should use the English language for communications[1] in the context of trade remedies investigations between the Parties.

PUBLIC

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives

The objectives of this Chapter are to:

(a) further the implementation of the principles and disciplines contained in the SPS Agreement and applicable international standards, guidelines and recommendations as developed by relevant international organisations;

[1] For the purposes of this Article, "communications" means written submissions and letters.

(b) protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that sanitary and phytosanitary (hereinafter referred to as "SPS") measures imposed by each Party do not create unjustified barriers to trade;

(c) strengthen communication, cooperation and resolution on SPS issues that may affect trade between the Parties and other agreed matters of interest to the Parties;

(d) promote greater transparency and understanding of the application of each Party's SPS measures; and

(e) enhance collaboration between the Parties on animal welfare issues and antimicrobial resistance.

ARTICLE 6.2

Scope

1. This Chapter applies to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. This Chapter includes collaboration activities on animal welfare and antimicrobial resistance.

PUBLIC

3. This Chapter does not affect the rights of the Parties under the TBT Agreement with respect to measures that are not within the scope of this Chapter.

PUBLIC

ARTICLE 6.3

Definitions

1. For the purposes of this Chapter:

(a) the definitions contained in Annex A of the SPS Agreement shall apply;

(b) "competent authorities" means those organisations recognised by each Party as responsible for developing, implementing and administering the SPS measures within its territory;

(c) "import conditions" means any SPS measures as set out in Annex A of the SPS Agreement with which imports must comply to reach the appropriate level of protection of the importing Party; and

(d) "protected zone" means, for a specific regulated pest, an officially defined geographical area in the Union in which that organism is not established in spite of favourable conditions and its presence in other parts of the territory of the Union.

2. The Parties may agree on other definitions for the application of this Chapter, taking into consideration the glossaries and definitions of relevant international organisations, such as the Codex Alimentarius Commission (hereinafter referred to as " Codex Alimentarius"), the World Organisation for Animal Health (hereinafter referred to as "WOAH"), and the International Plant Protection Convention, done at Rome on 6 December 1951 (hereinafter referred to as "IPPC"). If there is an inconsistency between the definitions agreed by the Parties and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

PUBLIC

ARTICLE 6.4

General provisions

1. The Parties affirm their rights and obligations relating to SPS measures under the SPS Agreement.

2. Each Party shall ensure that the principles of the SPS Agreement apply in the development, application or recognition of any SPS measure with the aim of facilitating trade between the Parties while protecting human, animal or plant life or health in the territory of each Party.

3. SPS measures shall not be used to create unjustified barriers to trade.

4. The Parties shall ensure that procedures that fall within the scope of this Chapter are undertaken and completed without undue delay and that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party where the same conditions prevail.

5. The Parties shall not use the procedures referred to in paragraph 4 or requests for additional information to delay access to their markets without scientific or technical justification.

PUBLIC

ARTICLE 6.5

Competent authorities and contact points

1. As of the date of entry into force of this Agreement, the Parties shall provide each other with a description of the competent authorities for the implementation of this Chapter and a contact point for communication on all matters covered by this Chapter.

2. The Parties shall inform each other of any significant changes in the structure, organisation and division of competences of their competent authorities and ensure that the information on contact points is kept up to date.

ARTICLE 6.6

Import conditions and procedures and trade facilitation

1. Each Party shall apply its import conditions and procedures to the entire territory of the exporting Party.

2. The importing Party shall:

(a) give consideration to any request of the exporting Party for a review of the import conditions and procedures existing between the Parties on the date of entry into force of this Agreement; and

(b) ensure full transparency of its import conditions and procedures and the frequency of import checks carried out on products from the other Party.

3. Each Party shall ensure that import conditions and procedures on food safety, animal health and plant health are not more burdensome or trade restrictive than necessary. These import conditions and procedures shall be established with the objective of minimising negative trade effects and of simplifying and expediting the clearance process while meeting the importing Party's requirements.

PUBLIC

4. With respect to any import conditions and procedures, to check and ensure the fulfilment of SPS measures, including approval and clearance processes, each Party shall ensure that:

(a) such import conditions and procedures are simplified, expedited and completed without undue delay, in accordance with the SPS Agreement;

(b) such import conditions and procedures are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party;

(c) the standard processing period of each import condition and procedure is published or the anticipated processing period is communicated to the applicant upon request; and

(d) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for the approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs.

5. In accordance with applicable International Standards for Phytosanitary Measures (hereinafter referred to as "ISPM") agreed under the IPPC, each Party shall maintain adequate information on its pest status, including surveillance, eradication and containment programmes and their results, in order to support the categorisation of pests and to justify establishing or maintaining import phytosanitary measures.

PUBLIC

6. Each Party shall establish lists of regulated pests and regulated products where a phytosanitary concern exists. The lists shall contain:

(a) the pests not known to occur within any part of the Party's own territory;

(b) the pests known to occur within any part of the Party's own territory and under official control; and

(c) the pests known to occur within any part of the Party's own territory, under official control and for which pest-free areas are established.

7. A Party may establish a list of plants considered to be of high phytosanitary risk for its territory on the basis of a preliminary risk assessment and may require that the import of such plants shall be subject to an approval procedure based on a pest risk assessment carried out in accordance with the relevant ISPM. Any preliminary risk assessment shall take into account available scientific and technical information as well as the intended use of the plant under consideration.

8. Each Party shall make available to the other Party its lists of regulated pests, regulated products and the phytosanitary import requirements for all regulated products and articles. This information shall include, as appropriate, the additional declarations as required by the importing Party.

PUBLIC

9. Where a range of alternative SPS measures may be available to attain the appropriate level of protection of the importing Party, the importing Party shall, on request of the exporting Party, consider selecting the more practicable and less trade-restrictive solution.

10. Where official SPS certificates are required, these shall be agreed between the Parties and shall be established in line with the principles laid down in the international standards, guidelines or recommendations of Codex Alimentarius, the WOAH and the IPPC. The importing Party shall not put in place any additional procedure that unnecessarily hampers trade or duplicates the official certificate.

11. Each Party shall promote the implementation of electronic certification and other technologies to facilitate trade. Consignments of products subject to SPS provisions shall be accepted by the importing Party on the basis of adequate guarantees by the exporting Party, without:

(a) pre-clearance programmes; or

(b) phytosanitary protocols or work plans required by the importing Party.

Having regard to point (a), control activities in the country of origin performed by the National Plant Protection Organisation (hereinafter referred to as "NPPO") of the country of destination should not be applied as a permanent import measure and shall only be carried out to facilitate new trade. On a voluntary basis, the NPPO of the country of origin may request pre-clearance within the inspection activities carried out by the importing Party as part of an audit carried out by the importing Party pursuant to Article 6.7.

PUBLIC

12. For greater certainty, the Parties shall not make the importation of products conditional on issuing import permits or import licences laying down SPS requirements other than those laid down in the applicable certification or import conditions and procedures for the products concerned. Each Party shall grant import permits or import licences in a non-discretionary manner.

13. The exporting Party shall ensure that products exported to the importing Party meet the appropriate level of protection of the importing Party. The responsibility for the implementation of adequate control measures and inspections lies with the exporting Party. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrates, to the satisfaction of the importing Party, that the import conditions and procedures are fulfilled.

14. The importing Party shall have the right to carry out import checks based on the SPS risks associated with importations. These checks shall be carried out without undue delay and with minimum trade disrupting effects. When products do not conform to the requirements of the importing Party, any action taken by the importing Party shall follow international standards and should be proportionate to the risk involved.

15. Any fees imposed for procedures on imported products from the exporting Party, including fees for desk evaluations of export applications, shall be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.

PUBLIC

ARTICLE 6.7

Audit

1. In order to attain and maintain confidence in the effective implementation of the provisions of this Chapter, the importing Party, within the scope of this Chapter, has the right to carry out audits, including:

(a) of all or part of the exporting Party's control and certification system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, WOAH and IPPC; and

(b) by requiring information from the exporting Party about its control and certification system and by being informed of the results of the controls carried out thereunder.

Pursuant to point (a), the importing Party shall have the right to conduct audit visits to the exporting Party.

2. For the purposes of the carrying out of an audit pursuant to paragraph 1, the exporting Party shall give reasonable access to the importing Party for inspection, verification, testing, and other relevant procedures.

3. Each Party shall provide the other Party with the results and conclusions of the audit visit carried out in the territory of the other Party.

PUBLIC

4. If the importing Party decides to carry out an audit visit to the exporting Party pursuant to paragraph 1, the importing Party shall notify the exporting Party of this audit visit at least 60 days before the audit visit is to be carried out, unless otherwise agreed by the Parties. Any change regarding the arrangements for such an audit visit shall be agreed by the Parties.

5. The draft report of an audit pursuant to paragraph 1 shall be shared with the exporting Party within 60 days after the completion of that audit. The exporting Party shall have 30 days to comment on the draft report. Any comments made by the exporting Party shall be attached to and, where appropriate, included in the final report. If a significant public, animal or plant health risk has been identified during an audit visit by the importing Party, it shall inform the exporting Party as soon as possible and in any case not later than 15 days after the end of an audit.

6. The costs incurred in carrying out an audit pursuant to paragraph 1 shall be borne by the importing Party.

ARTICLE 6.8

Procedure for the listing of establishments or facilities

1. Where an importing Party requires the listing of establishments or facilities, it shall approve establishments or facilities situated in the territory of the exporting Party without prior inspection if:

(a) the exporting Party has requested such an approval for a given establishment or facility;

PUBLIC

(b) the import of products has been authorised, if so required by the competent authority of the importing Party;

(c) the establishment or facility concerned has been approved by the competent authority of the exporting Party;

(d) the competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and

(e) the exporting Party has provided any relevant information and appropriate guarantees requested by the importing Party.

Unless it requests additional information on a given establishment or facility of the exporting Party, the importing Party shall take the necessary legislative or administrative measures in accordance with its applicable legal procedures to allow imports of the products of that establishment or facility within 60 days after the receipt of the request for approval referred to in point (a) of paragraph 1. If the importing Party rejects that request, it shall inform the exporting Party without delay of the reasons upon which the decision was based.

2. The importing Party shall make its lists of approved establishments or facilities publicly available.

PUBLIC

ARTICLE 6.9

Adaptation to regional conditions

PUBLIC

1. For animals, animal products and animal by-products:

(a) the Parties acknowledge the official animal health status as determined by the WOAH and also recognise the principles of zoning and compartmentalisation which they agree to apply in trade between them;

(b) the importing Party shall decide whether to recognise the health status applied by the exporting Party in accordance with the provisions of the WOAH Terrestrial Animal Health Code and the WOAH Aquatic Animal Health Code;

(c) the exporting Party shall identify and communicate disease-free areas or areas of low-disease prevalence within its territory to the importing Party and shall, if requested by the importing Party, provide the necessary evidence thereof, including a thorough explanation and supporting data; the importing Party shall assess this information within 30 days after its receipt;

(d) any audit the importing Party may require shall be carried out in accordance with Article 6.7; if the importing Party requires an audit, it shall be carried out within 30 days after the receipt of the request for the audit, unless otherwise agreed between the Parties;

(e) if the importing Party requires additional information pursuant to point (c) or an audit pursuant to point (d), the overall procedures including the decisions shall be finalised within 180 days, unless otherwise agreed between the Parties; and

(f) the Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapter 6 (Sanitary and Phytosanitary Measures) (hereinafter referred to as the "Committee" for the purposes of this Chapter) may provide guidance on the procedure for the mutual recognition of such areas as referred to in paragraph 1, taking into account the SPS Agreement and WOAH standards, guidelines or recommendations; such guidance may include situations related to outbreaks of diseases.

2. For plants and plant products, the importing Party shall acknowledge the determination of phytosanitary status made by the exporting Party as follows:

(a) the Parties recognise the concepts of pest-free areas, pest-free places of production and pest-free production sites, as well as areas of low pest prevalence as specified in relevant ISPM of the IPPC and of protected zones which they agree to apply in trade between them;

(b) when establishing or maintaining phytosanitary measures, the importing Party shall take into account pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence, as well as protected zones established by the exporting Party;

PUBLIC

(c) the exporting Party shall identify and communicate pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence or protected zones to the importing Party and, on request of the importing Party, provide additional information, including a full explanation and supporting data as provided for in the relevant ISPM or as deemed appropriate by the importing Party; unless the importing Party requests consultations within 120 days after the notification of that request, a regionalisation decision on pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence or protected zones which is notified to the exporting Party shall be deemed to be accepted by the importing Party;

(d) if additional information is required pursuant to point (c), the importing Party shall assess this additional information requested within 120 days after the date of its receipt; and

(e) any verification the importing Party may request shall be carried out in accordance with Article 6.7 and within three months after the receipt of the request for verification unless otherwise agreed between the Parties, taking into account the biology of the pest and the crop concerned; if the importing Party requests such verifications, the deadline for assessing additional information shall be interrupted.

3. If a Party considers that it has a special status with respect to any other disease which is not covered by paragraphs 1 and 2, it may request recognition of this status.

PUBLIC

ARTICLE 6.10

Transparency and exchange of information

PUBLIC

1. The Parties shall:

(a) ensure transparency as regards SPS measures applicable to trade between them;

(b) enhance mutual understanding of each Party's SPS measures and their application;

(c) exchange information on matters related to the development and application of SPS measures, including progress on newly available scientific evidence, that affect, or may affect, trade between them, with a view to minimising negative trade effects;

(d) on request of a Party, communicate the requirements that apply to the import of specific products within 15 working days; and

(e) on request of a Party, communicate the progress of the procedure for the authorisation of specific products within 15 working days.

2. Each Party shall notify the other Party in writing within two working days of any serious or significant human, animal or plant life or health risk, including any food emergencies, affecting products for which trade takes place between the Parties.

3. Where the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules or by publication on the official, publicly accessible and fee-free websites of the Parties, the addresses of which are communicated to the other Party, the information exchange shall be considered to have taken place.

4. All notifications under this Chapter shall be made to the contact points referred to in Article 6.5.

PUBLIC

ARTICLE 6.11

Technical consultations

1. Where a Party has significant concerns regarding human, animal, or plant life or health in the other Party or concerns about SPS measures proposed or implemented by the other Party, it may request technical consultations.

2. The Party that receives the request shall:

(a) respond to such a request no later than 30 days after its receipt, unless otherwise agreed by the Parties;

(b) engage in technical consultations to address those concerns; and

(c) make every effort to reach a mutually acceptable resolution of the concerns referred to in paragraph 1.

3. Each Party shall endeavour to provide the necessary information to avoid a disruption in trade between them and to reach a mutually acceptable resolution of the concerns referred to in paragraph 1.

4. Where the Parties have established communication mechanisms that may be used for the purposes of carrying out technical consultations, they shall utilise them to the extent possible in order to avoid unnecessary duplication, without prejudice to communications between the contact points referred to in Article 6.5.

5. The provisions of this Article do not preclude the Committee from considering the concerns referred to in paragraph 1.

6. Technical consultations pursuant to this Article shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

PUBLIC

ARTICLE 6.12

Emergency measures

1. A Party may adopt emergency measures that are necessary for the protection of human, animal or plant life or health. If a Party adopts such an emergency measure, the competent authority of that Party shall:

(a) immediately, and in any case within 24 hours, notify the competent authorities of the other Party and the contact points referred to in Article 6.5 of the adoption of that emergency measure;

(b) allow the other Party to make comments in writing;

(c) engage, if necessary, in technical consultations as referred to in Article 6.11; and

(d) take into account the comments referred to in point (b) and the results of technical consultations referred to in point (c).

2. In order to avoid unnecessary disruptions to trade, the importing Party shall consider information provided in a timely manner by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties.

PUBLIC

3. The importing Party shall ensure that any emergency measure taken pursuant to paragraph 1 is not maintained without scientific evidence. It shall review the measure with a view to avoiding unnecessary disruption to trade, to minimising its negative effect or to replace it by a permanent measure.

PUBLIC

ARTICLE 6.13

Collaboration

1. The Parties shall promote their collaboration in all relevant multilateral fora, in particular with the bodies responsible for the setting of international standards.

2. In accordance with Article 3 of the SPS Agreement and the decisions for the implementation of that Article adopted by the WTO SPS Committee, each Party shall take into account standards, guidelines and recommendations developed by the relevant international organisations when developing its respective SPS measures.

3. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health and that antibiotic use in animal production can contribute to antimicrobial resistance that may represent a risk to humans. The Parties recognise that the nature of the threat requires a transnational and "One Health" approach.

4. The Parties shall foster their cooperation, collaboration and exchange of information in relation to antimicrobial resistance. Each Party shall endeavour to coordinate with regional or multilateral work programmes for reducing the use of antibiotics in animal production and to ban their use as growth promoters with the aim to combat antibiotic resistance.

5. The Parties shall collaborate in the preparation of and follow existing and future guidelines, standards, recommendations and actions developed in relevant international organisations initiatives and national plans aiming to promote the prudent and responsible use of antibiotics in animal husbandry and veterinary practices. The Parties shall foster their collaboration on animal welfare issues. The technical discussions shall take place between experts in the field and in accordance with the guidance provided by the Committee.

6. The Parties may collaborate on matters other than those referred to in paragraph 5, in particular on fighting and preventing fraud, related to SPS measures.

7. The Committee shall exchange information, expertise, experiences and good practices on the matters covered by this Article.

8. Collaboration activities on animal welfare and antimicrobial resistance between the Parties shall be carried out by the relevant technical experts.

PUBLIC

ARTICLE 6.14

Equivalence

1. The Parties recognise that the principle of equivalence as set out in Article 4 of the SPS Agreement, in the WTO SPS Committee decisions and in other relevant international standards is an important tool for trade facilitation and has mutual benefits for both Parties. A determination of equivalence may be made by an importing Party in respect of partial or full equivalence of the exporting Party's SPS measures.

2. The importing Party shall accept an exporting Party's SPS measures as equivalent if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection. To facilitate a determination of equivalence, the importing Party shall, upon request, advise the other Party of the objective of any relevant SPS measures. For this purpose, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing and other relevant procedures.

3. Each Party shall, upon request, enter into consultations with the aim of achieving bilateral arrangements on a determination of equivalence of specified SPS measures.

PUBLIC

4. The Parties shall, within three months after receipt of a request from the exporting Party, initiate the consultations referred to in paragraph 3. The determination of equivalence shall be finalised without undue delay by the importing Party after the demonstration of equivalence of the proposed measures by the exporting Party. The importing Party shall accelerate the assessment taking into account any knowledge and past experience it has in trading with the exporting Party to make the determination as efficiently as possible.

5. In case of multiple requests from the exporting Party, the Parties shall agree within the Committee on a timeline in which they shall initiate the consultations referred to in paragraph 3.

6. The consideration by a Party of a request from the other Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question. If an equivalence determination is made, it shall be formally recorded and apply to the trade between the Parties in the relevant area without delay.

7. Where equivalence has been determined for a specific product, the Parties may agree on alternative import conditions and procedures.

PUBLIC

ARTICLE 6.15

Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapter 6 (Sanitary and Phytosanitary Measures)

1. This Article complements and further specifies Article 24.4.

2. The Committee shall be responsible for the effective implementation and operation of this Chapter. The Committee shall be composed of representatives of the Parties who are responsible for SPS measures and have the relevant expertise.

3. The Committee shall meet in person within one year after the entry into force of this Agreement and shall meet at least annually thereafter or as otherwise agreed by the representatives of the Parties.

4. The Committee shall establish its rules of procedures at its first meeting.

5. The Committee may propose to the Trade Committee to establish working groups to identify and address technical and scientific issues arising from this Chapter and explore opportunities for further collaboration on SPS matters of mutual interest.

PUBLIC

6. The Committee shall have the power to address any matter related to the effective functioning of this Chapter including to facilitate communication and strengthening collaboration between the Parties. In particular, it shall have the following responsibilities and functions:

(a) developing the necessary procedures or arrangements for the implementation of this Chapter;

(b) monitoring the progress of implementation of this Chapter;

(c) providing a forum for discussion of problems arising from the application of certain SPS measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade between the Parties;

(d) providing a forum to exchange information, expertise and experiences in the field of SPS matters;

(e) identifying areas for possible technical assistance projects and activities between the Parties; and

(f) any other function that is agreed by the Parties.

7. The Committee may make recommendations to the Trade Committee for decisions to be taken by the Trade Committee pursuant to Article 24.2 on the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalence and alternative measures under this Chapter.

PUBLIC

ARTICLE 6.16

Technical assistance

1. The Parties shall explore whether to provide technical assistance on SPS issues, with a view to enhancing mutual understanding of their respective regulatory systems and facilitating access to each other's markets.

2. Each Party, upon request, shall give due consideration to the provision of technical assistance in relation to SPS issues. Such technical assistance on specific issues shall be provided on mutually agreed terms and conditions.

3. The Committee shall decide on the fields for which technical assistance may be provided. Technical assistance may be provided to address specific needs concerning compliance with SPS measures including food safety, plant health and animal health, and international standards.

PUBLIC

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

PUBLIC

ARTICLE 7.1

Objective

The objectives of this Chapter are to increase and to facilitate trade in goods by preventing, identifying and eliminating unnecessary technical barriers to trade, and enhancing cooperation between the Parties.

ARTICLE 7.2

Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement, which may affect trade in goods between the Parties.

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

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

(b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement that are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

PUBLIC

ARTICLE 7.3

Reaffirmation on the TBT Agreement and incorporation of certain of its provisions

1. The Parties reaffirm their rights and obligations under the TBT Agreement. Articles 2 to 9 and Annexes 1 and 3 of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. References to "this Agreement" in the TBT Agreement, as incorporated into this Agreement, are to be read, as appropriate, as references to this Agreement.

3. The term "Members" in the TBT Agreement, as incorporated into this Agreement, shall mean the Parties to this Agreement.

ARTICLE 7.4

Technical regulations

PUBLIC

1. Each Party shall carry out, in accordance with its respective rules and procedures, a regulatory impact assessment of planned technical regulations.

2. Each Party shall, in accordance with its respective rules and procedures, assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil its legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.

3. Each Party shall use relevant international standards if they exist or their completion is imminent, as a basis for its technical regulations, except when the Party developing the technical regulation can demonstrate that such relevant international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

4. International standards developed by the organisations listed in Annex 7-A (List of International Standardising Bodies) shall be considered to be the relevant international standards within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, provided that in their development those organisations have complied with the principles and procedures set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5 and Annex 3 of the Agreement in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.15).

5. On request of either Party, the Trade Committee shall consider updating the list in, and may adopt a decision to amend, Annex 7-A (List of International Standardising Bodies), paragraph 1 of Annex 7-B (Supplier's Declaration of Conformity – Fields and Modalities) and Annex 7-C (Motor Vehicles and Equipment and Parts Thereof) pursuant to Article 24.2.

6. If a Party has not used international standards as a basis for its technical regulations, that Party shall, on request of the other Party, identify any substantial deviation from the relevant international standards and explain the reasons why those standards were deemed to be inappropriate or ineffective for the objectives pursued, and provide the scientific or technical evidence on which this assessment was based.

7. In addition to Articles 2.3 and 2.4 of the TBT Agreement, each Party shall review its technical regulations with a view to increasing their convergence with relevant international standards. Each Party shall take into account any new developments in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standards continue to exist.

PUBLIC

8. In accordance with its respective rules and procedures and without prejudice to Chapter 19 (Good Regulatory Practices), when developing major technical regulations which may have a significant effect on trade, each Party shall ensure that transparency procedures exist that allow persons of a Party to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate in that public consultation process on terms that are no less favourable than those accorded to its own persons, and endeavour to make the results of that consultation process public[1].

9. Each Party shall aim to apply its technical regulations uniformly and shall apply those technical regulations consistently to its whole territory in a manner consistent with the TBT Agreement.

ARTICLE 7.5

Standards

1. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage the standardising bodies within its territory, and, if applicable, the regional standardising bodies of which it or its standardising bodies within its territory are members to:

(a) participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

[1] For greater certainty, nothing in this Article shall be construed so as to require a certain manner or mechanism for the publication of the results of the consultation.

(b) use relevant international standards as a basis for the standards they develop, except where those international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection, fundamental climatic or geographical factors, or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardising bodies;

(d) review national and, if applicable, regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;

(e) cooperate with the relevant standardising bodies of the other Party in international standardisation activities; that cooperation may be undertaken in the international standardisation bodies or at regional level; and

(f) foster bilateral cooperation with the standardising bodies of the other Party.

2. The Parties should exchange information on:

(a) their use of standards in support of technical regulations; and

(b) each other's standardising processes, and the extent to which they use international standards and regional standards as a basis for their national standards.

PUBLIC

3. If a Party requires compliance with a standard through incorporation of, or reference to, a standard in a technical regulation or a conformity assessment procedure, the Party shall, in developing the draft technical regulation or conformity assessment procedure, comply with the transparency obligations set out in Article 7.7 and in Articles 2 or 5 of the TBT Agreement.

PUBLIC

ARTICLE 7.6

Conformity assessment

1. Without prejudice to Articles 5, 6 and 7 of the TBT Agreement, the provisions set out in Article 7.4 with respect to the preparation, adoption, and application of technical regulations shall also apply, *mutatis mutandis*, to conformity assessment procedures.

2. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures proportionate to the risks involved as determined on the basis of a risk assessment in accordance with that Party's rules;

(b) consider the use of a supplier's declaration of conformity[1], as assurance of conformity among the options for showing compliance with a technical regulation; and

[1] A supplier's declaration of conformity is a first party attestation of conformity issued by the manufacturer on its sole responsibility based on the results of an appropriate type of conformity assessment activity and excluding mandatory third party assessment.

(c) if requested, provide information to the other Party on the criteria used to select the conformity assessment procedures for specific products.

3. If a Party requires a third-party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental body as specified in paragraph 4, it shall:

(a) use accreditation as the preferred means to qualify conformity assessment bodies;

(b) make best use of international standards for accreditation and conformity assessment, as well as international agreements in which each Party's accreditation body participates, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (hereinafter referred to as "ILAC") and the International Accreditation Forum (hereinafter referred to as "IAF");

(c) join or, as applicable, encourage its conformity assessment bodies to join any functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(d) ensure that economic operators have a choice among the conformity assessment bodies designated by the authorities for a particular product or set of products;

(e) ensure that conformity assessment bodies carry out their activities in an independent manner in respect of economic operators and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;

PUBLIC

(f) allow, to the extent possible, conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party; nothing in this point shall prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body itself must meet to perform testing or inspections; and

(g) publish by electronic means, preferably on a single website, a list of the bodies that it has designated to perform such conformity assessment and the relevant information on the scope of each body's designation.

4. Nothing in this Article shall preclude a Party from requesting that conformity assessments in relation to specific products be performed by specified government authorities of the Party. In those cases, the Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited in amount to the approximate cost of the services rendered; and

(b) make the conformity assessment fees publicly available.

PUBLIC

5. Notwithstanding paragraphs 2, 3 and 4, in the fields listed in Annex 7-B (Supplier's Declaration of Conformity – Fields and Modalities), in the cases in which the Union accepts a supplier's declaration of conformity as proof of compliance with existing Union technical regulations, and Indonesia requires mandatory third-party conformity assessment, Indonesia shall, subject to its laws and regulations, accept certificates and test reports issued by conformity assessment bodies that are located in the Union territory and which have been accredited for the relevant scopes by accreditation bodies that are established in the Union and are ILAC or IAF members, as proof of compliance with its existing technical regulations.

PUBLIC

ARTICLE 7.7

Transparency

1. Each Party shall allow a period of at least 60 days following its transmission to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where practicable, a Party shall give positive consideration to a reasonable request to extend the comment period.

2. Each Party shall provide, if the notified text is not in one of the official WTO languages, a clear and comprehensive description of the content of the measure in the WTO notification format.

3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:

(a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, at a time when the written comments can be taken into account; and

(b) reply in writing to the comments no later than the date of publication of the adopted technical regulation or conformity assessment procedure.

4. Each Party shall publish on a website its responses to comments it received on its notifications referred to in paragraph 1 no later than the date of publication of the adopted technical regulation or conformity assessment procedure.

5. Each Party shall, if requested by the other Party, provide information regarding the objectives of, and the legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published on a website that is accessible free of charge.

7. Each Party shall provide information on the adoption and the entry into force of the technical regulations or conformity assessment procedures, and the adopted final texts through an addendum to the original notification to the WTO.

PUBLIC

8. Each Party shall allow a reasonable period of time between the publication of technical regulations or conformity assessment procedures and their entry into force for economic operators of the other Party to adapt. A "reasonable period of time" shall be understood to normally mean a period of no less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation or conformity assessment procedure to extend the period of time between the publication of the technical regulation or conformity assessment procedure and its entry into force. This obligation shall not apply if the delay would be ineffective in fulfilling the legitimate objectives pursued.

ARTICLE 7.8

Marking and labelling

1. The Parties affirm that their technical regulations, including or dealing exclusively with mandatory marking or labelling, shall follow the principles of Article 2 of the TBT Agreement.

PUBLIC

2. Unless it is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement, the Parties agree that where a Party requires mandatory marking or labelling of products:

(a) the Party shall only require information which is relevant for consumers or users of the product or to indicate the product's conformity with the mandatory technical requirements;

(b) the Party shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements;

(c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue the unique identification number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) provided it is not misleading, contradictory or confusing in relation to the information required in the importing Party, the Party shall permit the following:

(i) information in other languages in addition to the language required in the importing Party of the goods;

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics, as defined by organisations listed in, but not limited to, Annex 7-A (List of International Standardising Bodies); and

PUBLIC

(iii) additional information to that required in the importing Party of the goods;

(e) the Party shall accept that labelling, including supplementary labelling or corrections to labelling, may take place in customs warehouses or other designated areas in the customs territory of the importing Party unless such labelling is required to be carried out by competent authorities or by approved entities, as applicable, for reasons of public health or safety; and

(f) the Party shall endeavour to the extent possible to accept non-permanent or detachable labels, or inclusion of relevant information in the accompanying documentation, rather than labels physically attached to the product.

3. Paragraph 2 shall not apply to marking or labelling of medicinal products as defined by the laws and regulations of the respective Party.

ARTICLE 7.9

Cooperation on market surveillance[1]

1. The Parties recognise the importance of cooperation on market surveillance, safety and compliance for the facilitation of trade and for the protection of consumers and other users, and of building mutual trust based on timely shared information.

[1] "Market surveillance" is the activity carried out by relevant public authorities to ensure that products on the market conform and comply with the applicable laws and regulations of the respective Party.

2. Each Party shall ensure that:

(a) market surveillance functions are carried out by the competent authorities and that no conflicts of interest exist between the market surveillance function and the conformity assessment function; and

(b) there are no conflicts of interest between market surveillance bodies and the economic operators subject to control or supervision.

3. The Parties may cooperate and exchange views and information on matters related to market surveillance and enforcement activities.

4. The Union may provide Indonesia with selected information from its rapid alert system, or its successor, with respect to consumer products as referred to in Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and of the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC or its successor, and Indonesia may provide the Union with selected information from its relevant databases with respect to consumer products as referred to in its laws and regulations, on the safety of consumer products and on preventive, restrictive and corrective measures taken. The information exchange may take the form of:

(a) non-systematic exchanges, in duly justified and specific cases, excluding personal data; or

PUBLIC

(b) systematic exchanges, based on relevant arrangements on the safety of consumer products, as established by the Trade Committee which may decide to adopt those arrangements as an Annex, pursuant to Article 24.2.

5. The Parties may, subject to their respective laws and regulations, systematically exchange information on non-compliant products, including by electronic means, based on arrangements established by the Trade Committee which may decide to adopt those arrangements as an Annex, pursuant to Article 24.2.

6. Within the context of this Agreement, the Parties shall use the information obtained pursuant to paragraphs 3, 4 and 5 for the sole purpose of the protection of consumers, health, safety or the environment, and treat it as confidential.

7. The arrangements referred to in paragraphs 4 and 5 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

PUBLIC

ARTICLE 7.10

Technical discussions and consultations

1. Each Party may request technical discussions on any draft or proposed technical regulation or conformity assessment procedure of the other Party that the Party considers may significantly adversely affect trade between the Parties. The request shall be made in writing and identify:

(a) the measure at issue;

(b) the provisions of this Chapter to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the TBT Chapter Coordinator of the other Party nominated pursuant to Article 7.11.

3. On request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within 60 days after the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If the requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time period. In that case, the responding Party shall give positive consideration to that request.

PUBLIC

4. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the TBT Chapter Coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

5. For greater certainty, consultations pursuant to this Article shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

PUBLIC

ARTICLE 7.11

TBT Chapter Coordinator

1. Each Party shall nominate a TBT Chapter Coordinator and inform the other Party of the contact details and of any changes. The TBT Chapter Coordinators shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties in all matters on technical barriers to trade.

2. The functions of the TBT Chapter Coordinators shall include:

(a) monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;

(b) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;

(c) arranging the establishment of technical discussions as appropriate in accordance with Article 7.10; and

(d) exchanging available information on developments in non-governmental, regional, and multilateral fora related to standards, technical regulations, and conformity assessment procedures.

3. The TBT Chapter Coordinators shall communicate with one another by any agreed method that is appropriate to carry out their functions.

ARTICLE 7.12

Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies) and 7 (Technical Barriers to Trade)

1. This Article complements and further specifies Article 24.4.

PUBLIC

2. The Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters meeting in its specific configuration for Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies) and 7 (Technical Barriers to Trade) established pursuant to Article 24.4 (hereinafter referred to as the "Committee" for the purposes of this Chapter), shall consider any matter relating to the effective implementation and operation of this Chapter.

3. The Committee shall have the following functions:

(a) on request of either Party, reviewing Annex 7-A (List of International Standardising Bodies) and proposing any amendments to the Trade Committee for adoption pursuant to Article 24.2;

(b) reviewing paragraph 1 of Annex 7-B (Supplier's Declaration of Conformity – Fields and Modalities) and proposing any amendments to the Trade Committee for adoption pursuant to Article 24.2;

(c) deciding, on the basis of a recommendation of the Working Group on Motor Vehicles and Equipment and Parts Thereof made pursuant to point (c) of paragraph 21 of Annex 7-C (Motor Vehicles and Equipment and Parts Thereof), to propose amendments to Annex 7-C (Motor Vehicles and Equipment and Parts Thereof) to the Trade Committee for adoption pursuant to Article 24.2;

(d) cooperating and exchanging information on any issues relevant for the implementation of Annex 7-C (Motor Vehicles and Equipment and Parts Thereof); and

(e) considering any other matter related to this Chapter agreed by the Parties.

PUBLIC

CHAPTER 8

LIBERALISATION OF INVESTMENT AND TRADE IN SERVICES

PUBLIC

SECTION A

GENERAL PROVISIONS

ARTICLE 8.1

Objectives

The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create better conditions for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive liberalisation of investment and trade in services.

ARTICLE 8.2

Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, environment including tackling climate change, public morals, social or consumer protection, privacy and data protection, sustainable development, or promotion and protection of cultural diversity.

PUBLIC

ARTICLE 8.3

Coverage

1. This Chapter applies to measures adopted or maintained by:[1]

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

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

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

[1] For greater certainty, the entities listed under points (a) and (b) can adopt or maintain a measure by instructing or directing other entities with regard to the measure.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits[1] accruing to any Party under the terms of a specific commitment in this Chapter and its Annexes.

4. This Chapter shall not apply to:

(a) government procurement of goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale; and

(b) without prejudice to Article 8.11(2), subsidies or grants provided by authorities of a Party, including government-supported loans, guarantees, and insurance.

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

ARTICLE 8.4

Definitions

PUBLIC

For the purposes of this Chapter:

(a) "activities performed or services supplied in the exercise of governmental authority" means activities performed or services supplied neither on a commercial basis nor in competition with one or more economic operators;

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

(c) "computer reservation system (CRS) services" or "CRS services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

(d) "covered enterprise" means an enterprise which is owned, directly or indirectly, or controlled, directly or indirectly, by investors of one Party in the territory of the other Party made in accordance with applicable laws[1], whether established before or after the entry into force of this Agreement. A juridical person is:

(i) "owned" by a natural or juridical person of a Party if more than 50 % of the equity interest is beneficially owned by natural or juridical persons of that Party; or

(ii) "controlled" by a natural or juridical person of a Party if that natural or juridical person has the power to appoint a majority of its directors or otherwise to legally direct its actions;

(e) "cross-border supply of services" means the supply of a service:

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

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

(f) "economic activities" means activities of an industrial, commercial, or professional character and activities of craftsmen, including the supply of services, except for activities performed or services supplied in the exercise of governmental authority;

(g) "enterprise" means a juridical person, branch, or representative office set up through establishment;

[1] In the case of investments made in Indonesia, in accordance with applicable laws may include specific approval in writing if applicable.

(h) "establishment" means the setting up or the acquisition of an enterprise in Indonesia or in the Union, respectively, with a view to creating or maintaining lasting economic links;

(i) "ground handling services" means the supply at an airport of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

(j) "juridical person of a Party" means:

(i) for the Union, a juridical person set up in accordance with the laws and regulations of the Union or of a Member State and engaged in substantive business operations[1] in the territory of the Union; and

(ii) for Indonesia, a juridical person set up in accordance with the laws and regulations of Indonesia and engaged in substantive business operations in the territory of Indonesia;

[1] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the Union understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

notwithstanding points (i) and (ii), shipping companies established outside the Union or Indonesia and controlled by natural persons of a Member State of the Union or of Indonesia, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with their respective legislation, in that Member State or in Indonesia and fly the flag of a Member State or of Indonesia;

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

(l) "operation" includes the conduct, management, maintenance, use, enjoyment, or sale or other disposal of an enterprise by an investor of one Party in the territory of the other Party;

(m) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

(n) "service" includes any service in any sector but not services supplied in the exercise of governmental authority.

PUBLIC

ARTICLE 8.5

Denial of benefits

A Party may deny the benefits of this Chapter to an investor or a service supplier of the other Party or to a covered enterprise if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including measures to address serious human rights violations and abuses, which:

(a) prohibit transactions with that investor, service supplier, or covered enterprise; or

(b) would be violated or circumvented if the benefits of this Chapter were accorded to that investor, service supplier or covered enterprise, including where the measures prohibit transactions with a natural or juridical person who owns or controls any of them.

PUBLIC

SECTION B

LIBERALISATION OF INVESTMENTS

PUBLIC

ARTICLE 8.6

Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise for the pursuit of economic activities by an investor of the other Party in its territory.

2. The provisions of this Section do not apply to:

(a) audio-visual services;

(b) national maritime cabotage[1]; and

(c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services;

[1] Without prejudice to the scope of activities which may be considered as cabotage under the relevant laws and regulations of a Party, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Indonesia or in a Member State and another port or point located respectively in Indonesia including its continental shelf, archipelagic waters and exclusive economic zone or in that same Member State, including on its continental shelf, as provided in UNCLOS, and traffic originating and terminating in the same port or point located in Indonesia or in a Member State.

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

(iii) CRS services; and

(iv) ground handling services.

PUBLIC

ARTICLE 8.7

Market access

1. With respect to market access through establishment or operation in its territory, each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in the schedule of specific commitments contained in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) or Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedule of specific commitments contained in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) or Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia), are defined as:

(a) limitations on the number of enterprises, whether in the form of numerical quotas, monopolies, exclusive rights, or other requirement relating to establishment, such as economic needs tests;

(b) limitations on the total value of 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;[1]

(d) 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;

(e) measures which restrict or require specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity; or

[1] Points (a), (b) and (c) of this paragraph do not cover measures taken in order to limit the production of an agricultural or fishing product.

(f) limitations on the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

PUBLIC

ARTICLE 8.8

National treatment

1. In the sectors inscribed in the schedule of specific commitments in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) or Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia) and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to covered enterprises, as regards their establishment in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their enterprises.

2. Each Party shall accord to investors of the other Party and to covered enterprises, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their enterprises.

3. The treatment to be accorded by a Party pursuant to paragraphs 1 and 2 means, with respect to a government of a subnational region of Indonesia, treatment no less favourable than the most favourable treatment accorded in like situations, by that government to investors, and to enterprises of investors, of that subnational government.

4. The treatment to be accorded by a Party pursuant to paragraphs 1 and 2 means, with respect to a government of or in a Member State, treatment no less favourable than the most favourable treatment accorded in like situations, by that government to investors of that Member State and to their enterprise in its territory.

PUBLIC

ARTICLE 8.9

Most-favoured-nation treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises, as regards their establishment in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and enterprises of any third country.

2. Each Party shall accord to investors of the other Party and to covered enterprises, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and enterprises of any third country.

3. Notwithstanding paragraphs 1 and 2, a Party shall not be obliged to extend to investors of the other Party or to their covered enterprises the benefits of any treatment accorded to investors and enterprises of any third country pursuant to any international investment treaty or other trade agreement in force or signed prior to the date of entry into force of this Agreement.

4. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to the investors of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreements or arrangements relating wholly or mainly to taxation; or

(b) measures providing for the recognition of qualifications, licences or prudential measures as provided for in Article VII of GATS or its Annex on Financial Services.

5. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 does not include dispute settlement procedures provided for in other international investment treaties and other trade agreements.

6. The substantive provisions in other international investment or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus shall not give rise to a breach of this Article. However, measures applied pursuant to such provisions may constitute "treatment" as referred to in paragraphs 1 and 2, and thus give rise to a breach of this Article.

PUBLIC

ARTICLE 8.10

Schedule of specific commitments

1. The sectors liberalised by each of the Parties pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 8.7, 8.8, 8.9 and 8.11 are set out in the schedule of commitments included in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) and Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia).

2. Each Party shall identify in its schedules of commitments the sectors or subsectors that it commits for future liberalisation.

3. If a Party amends a measure relevant for a commitment in a sector or subsector referred to in paragraph 2, in a manner that reduces or eliminates the inconsistency of that measure with Articles 8.7, 8.8 or 8.11, as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure's inconsistency with Articles 8.7, 8.8 or 8.11.

PUBLIC

4. A Party may adopt a measure or series of measures that is consistent with the schedule of commitments included in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) and Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia), provided that such measure or series of measures does not require, directly or indirectly an investor of the other Party, to sell, or otherwise dispose of, a covered enterprise that exists at the time the measure or series of measures becomes effective.

PUBLIC

ARTICLE 8.11

Performance requirements[1]

1. In the sectors set out in its schedule of specific commitments in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) or Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia) and subject to any condition and qualification set out therein, a Party shall not impose, or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment of all enterprises or the operation of all enterprises in its territory, to:[2]

(a) export a given level or percentage of goods or services;

(b) achieve a given level or percentage of domestic content;

[1] For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

[2] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purposes of paragraph 1.

(c) purchase, use or accord a preference to goods produced or services provided in its territory, or purchase goods or services from natural persons or enterprises in its territory;

(d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that enterprise;

(e) restrict sales of goods or services in its territory that such enterprise produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;

(g) supply exclusively from the territory of the Party a good produced or a service provided by the enterprise to a specific regional market or the world market; and

(h) adopt:

(i) a rate or amount of royalty below a certain level; or

(ii) a given duration of the term of a licence contract[1],

[1] A licence contract referred to in this point means any contract concerning the licensing of technology, a production process or other proprietary knowledge.

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and the natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that license contract by the exercise of non-judicial governmental authority of a Party.[1]

2. In the sectors set out in its schedule of specific commitments in Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) and Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia) and subject to any condition and qualification set out therein, a Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or the operation of any enterprise in its territory, on compliance with any of the following requirements[2]:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;

(c) to relate in any way the volume or value of import to the volume or value of export, or to the amount of foreign exchange inflow associated with that enterprise; or

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1 For greater certainty, point (h) does not apply when the licence contract is concluded between the enterprise and the Party.

2 For greater certainty, points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

(d) to restrict the sale of goods or services in its territory that such investment produces or provides by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment of all enterprises or the operation of all enterprises in its territory, in compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Points (f) and (h) of paragraph 1 do not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a restriction of competition or if a Party authorises the use of an intellectual property right in accordance with Article 31 and 31*bis* of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.

5. The provisions of points (a), (b) and (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. This Article does not apply to procurement by a procuring entity for goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods and services for commercial sale.

PUBLIC

7. Point (h) of paragraph 1 does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under a Party's copyright laws.

8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

9. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with its schedules of commitments referred to in Article 8.10.

10. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties other than a Party, if a Party did not impose or require the commitment, undertaking, or requirement.

PUBLIC

SECTION C

CROSS-BORDER SUPPLY OF SERVICES

PUBLIC

ARTICLE 8.12

Scope

This Section applies to measures of the Parties affecting the cross-border supply of all services sectors with the exception of:

(a) audio-visual services;

(b) national maritime cabotage[1]; and

(c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

[1] Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Indonesia or in a Member State and another port or point located also in Indonesia including its continental shelf, archipelagic waters and exclusive economic zone or also in that same Member State, including on its continental shelf, as provided in UNCLOS, and traffic originating and terminating in the same port or point located in Indonesia or in a Member State.

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

(iii) CRS services; and

(iv) ground handling services.

PUBLIC

ARTICLE 8.13

Market access

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment not less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule of specific commitments in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union) or Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia).

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 the schedule of specific commitments in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union) or Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia), are defined as:

(a) limitations on the number of services suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test[1];

(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; or

(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.

[1] Point (a) of paragraph 2 includes measures which require a service supplier of the other Party to have an enterprise within the meaning of point (g) of Article 8.4 or to be resident in a Party's territory as a condition for the cross-border supply of a service.

ARTICLE 8.14

National treatment

1. In the sectors inscribed in its schedule of specific commitments in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union) or Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia) and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.

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

3. Formally identical or formally different treatment 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 the other Party.

4. This Article shall not be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

PUBLIC

ARTICLE 8.15

Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that which it accords, in like situations, to services and service suppliers of any third country.

2. Notwithstanding paragraph 1, a Party shall not be obliged to extend to services and service suppliers of the other Party the benefits of any treatment accorded to services and service suppliers of any third country pursuant to any international investment treaty or other trade agreement signed or in force prior to the date of entry into force of this Agreement.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreements or arrangements relating wholly or mainly to taxation; or

(b) measures providing for the recognition of qualifications, licences or prudential measures as provided for in Article VII of GATS or its Annex on Financial Services.

PUBLIC

4. The substantive provisions in other international investment or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus shall not give rise to a breach of this Article. However, measures applied pursuant to such provisions may constitute "treatment" as referred to in paragraphs 1 and 2, and thus give rise to a breach of this Article.

PUBLIC

ARTICLE 8.16

Schedule of specific commitments

The sectors liberalised by each of the Parties pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 8.13, 8.14, and 8.15 are set out in the schedules of commitments included in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union), Annex 8-D (MFN Treatment) or Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia) respectively.

SECTION D

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

PUBLIC

ARTICLE 8.17

Scope and definitions

1. This Section applies to measures of the Parties concerning the entry and temporary stay in their territories of natural persons for business purposes of the other Party as provided in paragraph 2, subject to each Party's reservation as specified in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union) or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia) respectively in accordance with Article 8.3(2).

2. For the purposes of this Chapter:

(a) "business visitors for establishment purposes" means natural persons working in a senior position within a juridical person of a Party who are responsible for setting up an enterprise of that juridical person in the territory of the other Party, do not offer or supply services or engage in any other economic activity than is required for establishment purposes and do not receive remuneration from a source located within the territory of that other Party;

(b) "contractual services suppliers" means natural persons employed by a juridical person of a Party that itself is not an agency for placement and supply of personnel nor acting through such an agency, that is not established in the territory of the other Party and that has concluded a *bona fide* contract to supply services to a final consumer in the other Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to supply services[1];

(c) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who are not established in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency for placement and supply of personnel) to supply services to a final consumer in the latter Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to supply services[2];

(d) "installers and maintainers" means natural persons of a Party who are seeking entry and temporary stay in the territory of the other Party, who possesses a specialised knowledge essential to a contractual obligation of a seller or a lessor of a Party, supplying relevant services, which may include training workers to perform relevant services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise of the Party of which the installers and maintainers are natural persons, within the duration of the warranty or service contract;

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1 The contract to supply services referred to under points (b) and (c) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

2 The contract to supply services referred to under points (b) and (c) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

(e) "intra-corporate transferees"[1] means natural persons who have been employed by a juridical person of a party or its branch or have been partners in it for at least one year and who are temporarily transferred to an enterprise of the juridical person in the territory of the other Party. The natural person concerned must belong to one of the following categories:

(i) "directors", "managers" or "executives"[2], which means persons working in a senior position within a juridical person of a Party, who primarily direct the management of the enterprise in the territory of the other Party, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:

(A) directing the enterprise or a department or subdivision thereof;

(B) supervising and controlling the work of other supervisory, professional or managerial employees; and

(C) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

PUBLIC

1 For greater certainty, managers, executives and specialists may be required to demonstrate they possess the professional qualification and length of working experience needed in the juridical person to which they are transferred.

2 For greater certainty, in Indonesia, managers and executives are not allowed to receive direction directly from stockholders.

(ii) "specialists", which means persons working within a juridical person who possesses a specialised knowledge essential to the enterprise's areas of activity, techniques or management; in assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;

(iii) "trainee employees", which means persons who have been employed by a juridical person or its branch for at least one year, possess a university degree and are temporarily transferred to obtain training in business techniques or methods[1] for career development purposes;

(f) "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training; and

(g) "short-term business visitors" means natural persons of a Party who are seeking entry and temporary stay in the territory of the other Party, and who are allowed to engage in:

(i) meetings and consultations, such as natural persons attending meetings or conferences, giving lectures or engaged in consultations with business associates; or

[1] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Austria, Czechia, Germany, Spain, France, and Hungary, training must be linked to the university degree which has been obtained.

(ii) sales, as representatives of a supplier of services or goods taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves, not being commission agents and not engaging in making direct sales to the general public.

PUBLIC

ARTICLE 8.18

Intra-corporate transferees and business visitors for establishment purposes

1. For every sector committed in accordance with Section B and subject to the relevant conditions and qualifications specified in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union) or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia)[1],

(a) a Party shall allow:

(i) the entry and temporary stay of business visitors for establishment purposes and intra-corporate transferees; and

(ii) the employment in its territory of intra-corporate transferees of the other Party;

[1] For greater certainty, if a Party set out a reservation in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union), Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia), Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) or Annex 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia), the reservation also constitutes a reservation to this Article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

(b) a Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are granted entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory; and

(c) a Party shall accord to intra-corporate transferees and business visitors for establishment purposes of the other Party, with regard to their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The entry and temporary stay shall be for a period of up to three years for directors, managers, executives and specialists, and one year for trainee employees. For business visitors for establishment purposes it shall be for a maximum of 60 days, extendable to 120 days, for Indonesia, and 90 days, for the Union within any 12-month period.

PUBLIC

ARTICLE 8.19

Short-term business visitors, and installers and maintainers

1. For every sector committed in accordance with this Agreement subject to the relevant conditions and qualifications specified in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union) or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia), a Party shall grant entry and temporary stay to short-term business visitors and installers and maintainers of the other Party, subject to the following conditions and relevant qualifications:

(a) the short-term business visitors and installers and maintainers are not engaged in selling their goods or supplying services to the general public; and

(b) the short-term business visitors and installers and maintainers do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily.

2. Unless otherwise specified in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union), or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia), a Party shall grant entry of short-term business visitors and installers and maintainers without the requirement of a work permit, economic needs test, or other prior approval procedures of similar intent.

3. The permissible length of stay shall be for a period of up to 90 days in any 12-month period.

PUBLIC

ARTICLE 8.20

Contractual service suppliers

1. The Parties reaffirm their respective obligations arising from their commitments under GATS with respect to the entry and temporary stay of contractual services suppliers.

2. For every sector listed below, each Party shall allow the supply of services into their territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 3 and any reservations listed in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union) or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia) respectively.

3. The commitments undertaken by the Parties pursuant to paragraph 2 are subject to the following conditions:

(a) the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding 12 months;

(b) the natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least five years of professional experience[1] in the sector of activity which is the subject of the contract. Natural persons should be offering such services as employees of the juridical person supplying the services for at least two years immediately preceding the date of submission of an application for entry into the other Party;

[1] Obtained after having reached the age of majority.

(c) the natural persons entering the other Party must possess:

(i) a degree or a qualification demonstrating knowledge of an equivalent level;[1] and

(ii) a professional qualification where it is required to exercise an activity pursuant to the laws and regulations or legal requirements of the Party where the service is supplied;

(d) the natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the juridical person employing the natural person;

(e) the entry and temporary stay of natural persons within the Party concerned shall be for a period as set out in each schedule;

(f) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided; and

(g) the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract pursuant to relevant laws and regulations of the Party where the service is supplied.

PUBLIC

[1] Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory. In evaluating the qualification, that Party shall endeavour to take into account relevant information that may be provided by relevant authority of the other Party.

ARTICLE 8.21

Independent professionals

1. For every sector listed in Annex 8-C (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Union) or Annex 8-G (Schedule of Commitments on Temporary Presence of Natural Persons for Business Purposes – Indonesia), the Parties shall allow the supply of services into their territory by independent professionals of the other Party, subject to the conditions specified in paragraph 2, and any reservations listed in the relevant Annex.

2. The commitments undertaken by the Parties are subject to the following conditions:

(a) the natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months;

(b) the natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years of professional experience in the sector of activity which is the subject of the contract;

(c) the natural persons entering the other Party must possess:

(i) a degree or a qualification demonstrating knowledge of an equivalent level[1]; and

[1] Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether it is equivalent to a university degree required in its territory. In evaluating the qualification, that Party shall endeavour to take into account relevant information that may be provided by relevant authority of the other Party.

(ii) a professional qualification where it is required to exercise an activity pursuant to the laws and regulations of the Party where the service is supplied;

(d) the entry and temporary stay of natural persons within the Party concerned shall be for a period as set out in each Party's Schedule; and

(e) access granted under the provisions of this Article relates only to the service activity which is the subject of the contract and it does not confer entitlement to exercise the professional title of the Party where the service is provided.

PUBLIC

ARTICLE 8.22

Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons with respect to whom commitments are undertaken in accordance with this Chapter.

2. The information referred to in paragraph 1 shall, to the extent possible, include *inter alia* the following information:

(a) entry conditions;

(b) an indicative list of documentation required to verify the fulfilment of the conditions;

(c) indicative processing time;

(d) applicable fees;

(e) appeal procedures.

3. For greater certainty, paragraph 2 shall not be construed as to require any Party to provide an appeal procedure that is inconsistent with its legal system.

PUBLIC

ARTICLE 8.23

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to any refusal of granting temporary entry, unless the matter involves a pattern of practice.

SECTION E

REGULATORY FRAMEWORK

PUBLIC

SUB-SECTION 1

DOMESTIC REGULATION

ARTICLE 8.24

Scope and definitions

1. This Sub-Section applies to measures of the Parties relating to licencing requirements and procedures and qualification requirements and procedures that affect:

(a) the cross-border supply of services;

(b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise and operation of a covered enterprise;

(c) the supply of a service through temporary stay in their territory of categories of natural persons as defined in Article 8.17(2).

2. This Sub-Section only applies to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.

3. This Sub-Section does not apply to measures which constitute limitations subject to scheduling of commitments pursuant to Articles 8.7 or 8.13 or Articles 8.8 or 8.14 where applicable or Article 8.11 or Articles 8.18, 8.19, 8.20 or 8.21.

4. For the purposes of this Sub-Section:

(a) "competent authority" means any central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish an economic activity other than services;

(b) "licencing procedures" means administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as referred to in paragraph 1, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements;

(c) "licencing requirements" means substantive requirements, other than qualification requirements, which apply to a natural or a juridical person in order to obtain, amend or renew authorisation to carry out the activities as referred to in paragraph 1;

PUBLIC

(d) "qualification procedures" means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service; and

(e) "qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.

PUBLIC

ARTICLE 8.25

Conditions for licencing and qualification

1. Each Party shall ensure that measures relating to licencing requirements, licencing procedures, qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) clear;

(b) objective and transparent; and

(c) pre-established and accessible to the public.

3. An authorisation or, subject to availability, a licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining it have been met.

4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures provide for an objective and impartial review.

5. The provisions of paragraph 4 shall not be construed as requiring a Party to institute such tribunals or procedures where this would be inconsistent with the nature of its legal system.

6. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

PUBLIC

7. Subject to the provisions specified by paragraph 6, each Party, when establishing the rules for the selection procedure, may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

PUBLIC

ARTICLE 8.26

Licencing and qualification procedures

1. Licencing and qualification procedures and formalities shall be clear, pre-established, and made publicly available, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service. Any licencing fees[1], except for financial services, which the applicants may incur from their application, shall be reasonable and not restrict the supply of the relevant service or the pursuit of the relevant economic activity.

2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations under this Agreement.

[1] Licencing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

3. Each Party shall ensure that the procedures applied by, and the decisions of, the competent authority in the licencing or authorisation process are impartial. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorisation is required.

4. In case specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing an application.

6. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify to the extent feasible the additional information required to complete the application, and provide the opportunity to correct deficiencies.

7. Copies that are authenticated in accordance with the Party's domestic law should be accepted, whenever possible, in place of original documents.

PUBLIC

8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In line with each Party´s laws and regulations, the applicant shall, upon formal request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant shall be allowed, within reasonable time limits, to resubmit an application.

9. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

PUBLIC

SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 8.27

Mutual recognition of professional qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications or professional experience required for the sector of activity concerned in the territory where the service is supplied.

2. Where appropriate, the Parties shall encourage the establishment of dialogue between their relevant experts, regulators or industry bodies to share and facilitate understanding of the respective qualifications, registration requirements and processes.

3. The Parties shall encourage the relevant professional bodies or respective authorities, as appropriate, in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the Trade Committee. Such a joint recommendation shall be supported by evidence of:

(a) the economic value of an envisaged arrangement on mutual recognition of professional qualifications (hereinafter referred to as a "Mutual Recognition Arrangement"); and

(b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licencing, operation and certification of entrepreneurs and service suppliers are compatible.

4. On receipt of a joint recommendation, the Trade Committee shall review its consistency with this Chapter, within a reasonable period of time. The Trade Committee may, following such review, develop and adopt a Mutual Recognition Arrangement[1] by decision pursuant to Article 24.2.[2]

[1] For greater certainty, nothing in this Article shall be construed as requiring the Parties to establish automatic recognition of professional qualifications, and such Mutual Recognition Arrangements shall establish the conditions for the competent authorities to grant recognition in the mutual interest of both Parties.

[2] For greater certainty, this paragraph shall be without prejudice to the right of the Trade Committee to delegate the review and development of a Mutual Recognition Arrangement to the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property (hereinafter referred to as the "Committee" for the purposes of this Chapter). The Trade Committee retains the right to adopt a Mutual Recognition Arrangement.

5. Notwithstanding paragraph 3, the entry into force of the Mutual Recognition Arrangement shall be that provided therein or in the decision.

6. The guidelines for arrangements on the recognition of professional qualifications set out in Annex 8-H (Guidelines for Arrangements on the Mutual Recognition of Professional Qualifications) shall be taken into account in the development of the joint recommendations referred to in paragraph 2 and by the Trade Committee when assessing whether to adopt such a Mutual Recognition Arrangement, as referred to in paragraph 3.

7. The Trade Committee may consider:

(a) issues of mutual interest relating to the supply of professional services; and

(b) the possibility of developing a comparison of European and Indonesian Qualifications Frameworks to improve understanding of the Parties' respective qualification frameworks.

PUBLIC

SUB-SECTION 3

DELIVERY SERVICES

PUBLIC

ARTICLE 8.28

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for all delivery services.

2. For the purpose of this Sub-Section:

(a) "delivery services" mean postal and courier or express services, which include the collection, sorting, transport, and delivery of postal items;

(b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

(c) "express mail services" means international express delivery services supplied through the EMS Cooperative, which is the voluntary association of designated postal operators under Universal Postal Union (hereinafter referred to as "UPU");

(d) "license" means an authorisation, granted to a service supplier by a regulatory authority, setting out procedures, obligations and requirements specific to the delivery services sector pursuant to laws and regulations of each Party;

(e) "postal item" means an item up to 31,5 kg addressed in the final form in which it is to be carried by any type of delivery service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue, and others;

(f) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory pursuant to a legislative measure of the Party; and

(g) "universal service" means the permanent provision of a service of a specified quality at all points in the territory of a Party at affordable prices for all users.

ARTICLE 8.29

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.

PUBLIC

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

PUBLIC

ARTICLE 8.30

Universal service funding

The Parties shall not impose discriminatory fees or other charges on the supply of a non-universal delivery service for the purpose of funding the supply of a universal service.[1]

ARTICLE 8.31

Prevention of market distortive practices

Each Party shall ensure that a supplier of delivery services subject to a universal service obligation or a postal monopoly does not engage in the following market distortive practices:

(a) using revenues derived from the supply of such service to cross-subsidise the supply of an express delivery service or any non-universal delivery service;[2]

[1] This Article does not apply to generally applicable taxation measures or administrative fees.

[2] Measures to demonstrate that revenues derived from the supply of delivery services subject to universal service obligation or postal monopoly are not used to cross-subsidise the supply of non-monopoly or non-universal delivery service may include maintaining separate accounts.

(b) unjustifiably differentiating among customers such as businesses, large volume mailers or consolidators with respect to, for example, tariffs for the supply of a service subject to a universal service obligation or a postal monopoly; or

(c) any other market distortive practice laid down in the laws and regulations of the Party in which the service is supplied.

PUBLIC

ARTICLE 8.32

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

(a) all licencing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of the licences.

2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

3. Each Party shall inform the applicant of the reasons for denial of the licence in writing. Each Party shall ensure that it institutes or maintains an appeal procedure through a body that is independent from the parties involved and that may be a court.

PUBLIC

ARTICLE 8.33

Independence of the regulatory body

1. Each Party shall create or maintain a regulatory body which shall be legally distinct and functionally independent from any supplier of delivery services. That body may be a government institution.

2. Each Party shall ensure that regulatory bodies as referred to in paragraph 1 perform their task in a transparent and timely manner. They shall ensure that regulatory bodies have adequate financial and human resources to carry out the task assigned to them.

3. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

4. A Party that retains ownership or control of undertakings providing delivery services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

SUB-SECTION 4

TELECOMMUNICATIONS SERVICES

PUBLIC

ARTICLE 8.34

Scope

1. This Sub-Section sets out the principles of the regulatory framework for the provision of public telecommunications networks and services, liberalised pursuant to Sections B and C of this Chapter.

2. This Sub-Section does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

ARTICLE 8.35

Definitions

PUBLIC

For the purposes of this Sub-Section:

(a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services via that network or service or have the potential to do so;

(b) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(c) "interconnection" means linking of public telecommunications networks providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier or to access services provided by another supplier;

(d) "leased circuits" means telecommunications services or facilities that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;

(e) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

(f) "network element" means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

(g) "non-discriminatory" means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like situations;

(h) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;

(i) "public telecommunications service" means any telecommunications service that is offered to the public generally;

(j) "telecommunications" means the transmission and reception of signals by any electromagnetic means;

PUBLIC

(k) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

(l) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Sub-Section;

(m) "telecommunications service" means a service which consists wholly or mainly of the transmission and reception of signals, including of broadcasting signals, over telecommunications networks, including over networks used for broadcasting. Telecommunications services exclude services providing, or exercising, editorial control over content transmitted using telecommunications networks and services;

(n) "universal service" means the minimum set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; and

(o) "user" means any legal entity or natural person using a public telecommunications network or service.

PUBLIC

ARTICLE 8.36

Telecommunications regulatory authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment, and that the decisions of and the procedures used by the telecommunications regulatory authority are impartial, with respect to all market participants. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. The telecommunications regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it pursuant to national law to enforce the obligations set out in Articles 8.38, 8.39, 8.40, 8.42 and 8.43.

3. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this Sub-Section. Such power shall be exercised transparently and in a timely manner. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

PUBLIC

4. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Sub-Section. Information requested shall be treated in accordance with the requirements of confidentiality.

5. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision before an appellate body that is independent of the telecommunications regulatory authority and of the parties affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with national law.

ARTICLE 8.37

Authorisation to provide telecommunications services

1. If a Party requires an authorisation for the provision of telecommunications networks or services, that Party shall make publicly available the types of services requiring authorisation, all authorisation criteria, any terms and conditions generally associated with the authorisation, and the applicable procedures.

PUBLIC

2. If a Party requires a formal authorisation decision, that Party shall determine a reasonable period of time normally required to obtain such a decision, shall communicate this in a transparent manner and shall endeavour to ensure that the decision is taken within the stated period of time.

3. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services provided.

4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall be able to seek recourse before an appeal body.

5. Administrative fees imposed on suppliers, if any, shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Sub-Section.[1]

[1] Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 8.38

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

PUBLIC

ARTICLE 8.39

Access and use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 to 5.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered within or across the border of that Party, including private leased circuits, and shall ensure, subject to the provisions in paragraph 5, that such suppliers are permitted:

(a) to purchase or lease and attach a terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;

(b) to connect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another service supplier; and

(c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications services other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or

PUBLIC

(b) protect the technical integrity of public telecommunications networks or services.

ARTICLE 8.40

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations under this Sub-Section, and at the request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.

2. Without prejudice to the requirements of business confidentiality, the decision issued by the telecommunications regulatory authority shall be made available to the public. The parties concerned shall be given a full statement of the reasons on which the decision is based and shall have the right to appeal the decision, in accordance with Article 8.36(5).

3. The procedure referred to in paragraphs 1 and 2 shall not preclude any party concerned from having recourse to relevant court.

PUBLIC

ARTICLE 8.41

Competitive safeguards

PUBLIC

1. Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or services which, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

2. For greater certainty, nothing in this Article shall prevent a Party from maintaining measures for the purpose of preventing anti-competitive practices by suppliers of public telecommunications networks or services which are not major suppliers.

ARTICLE 8.42

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the own like services of that major supplier, or for like services of its subsidiaries or other affiliates;

(b) in a timely fashion, on terms and conditions (including as regards to rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier is not required to pay for network components or facilities that are not necessary for the provision of the service; and

(c) upon request, at network termination points additional to those offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. The procedures applicable for interconnection to a major supplier shall be made publicly available.

PUBLIC

3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers, as appropriate.

PUBLIC

ARTICLE 8.43

Access to major suppliers' essential facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include network elements, leased circuits services and associated facilities.

ARTICLE 8.44

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner, and in pursuit of general interest objectives. Procedures, conditions and obligations attached to rights of use shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. The current use of allocated frequency bands shall be made publicly available, detailed identification of radio spectrum allocated for specific government uses is not required.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Articles 8.7 and 8.13. Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Chapter. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

PUBLIC

ARTICLE 8.45

Number portability

In accordance with Articles 8.8 and 8.14, each Party shall ensure that suppliers of public telecommunications services provide number portability on reasonable terms and conditions to the extent that such service is already provided in the territory of each Party.

ARTICLE 8.46

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Universal service obligations shall not be regarded as anti-competitive, provided that they are administered in a proportionate, transparent, objective and non-discriminatory way. The administration of such obligations shall be neutral with respect to competition and not be more burdensome than necessary for the type of universal service defined by the Party.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate the universal service suppliers, that Party shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

PUBLIC

ARTICLE 8.47

Confidentiality of information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements, pursuant to Articles 8.38, 8.39, 8.42 or 8.43, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of the information transmitted or stored.

2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

PUBLIC

SUB-SECTION 5

FINANCIAL SERVICES

PUBLIC

ARTICLE 8.48

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections B, C and D.

2. For the purposes of this Sub-Section and of Sections B, C and D:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

(i) insurance and insurance-related services:

(A) direct insurance (including co-insurance):

(aa) life;

(bb) non-life;

(B) reinsurance and retrocession;

(C) insurance inter-mediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

PUBLIC

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(aa) money market instruments (including cheques, bills, certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

PUBLIC

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(L) advisory, intermediation and other auxiliary financial services to any of the activities listed in points (A) to (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) "financial service supplier" means any natural or juridical person of a Party that seeks to provide or provides financial services; the term "financial service supplier" does not include a public entity;

PUBLIC

(c) "public entity[1]" means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, and does not include an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

(d) "new financial service" means a financial service including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied and regulated in the territory of the other Party;

(e) "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

PUBLIC

1 For greater certainty, a public entity includes a financial regulatory or supervisory authority.

3. For the purposes of point (a) of Article 8.4, "services supplied in the exercise of governmental authority" means the following:

(a) activities conducted by a central bank or a monetary authority or by any public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system or social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party or its public entities.

PUBLIC

ARTICLE 8.49

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) ensuring the integrity and stability of a Party's financial system.

2. If the measures referred to in paragraph 1 do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding a Party's commitments or obligations under such provisions.

3. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

PUBLIC

ARTICLE 8.50

Effective and transparent regulation

1. Each Party shall make available to financial services suppliers its requirements for completing applications relating to the supply of financial services.

2. On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, that Party shall notify the applicant without undue delay.

3. Each Party shall endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance and against money laundering and terrorist financing are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, those adopted by the G20, the Financial Stability Board, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organisation of Securities Commissions, the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

PUBLIC

ARTICLE 8.51

New financial services

Each Party shall permit a financial service supplier of the other Party established in its territory to provide any new financial service that the former Party would permit its own financial service suppliers to provide in accordance with its laws or regulations in like situations, provided that the introduction of the new financial services does not require the adoption of a new law or modification of an existing law. A Party may determine the institutional and legal form through which the service may be provided and may require authorisation for the provision of the service. When such authorisation is required, a decision on the authorisation shall be made in accordance with Section E, Sub-Section 1, and the authorisation may only be refused for prudential reasons.

ARTICLE 8.52

Specific exceptions

1. Nothing in this Chapter shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the laws and regulations of that Party, by financial service suppliers in competition with public entities or private institutions.

2. This Agreement does not apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. This Chapter shall not be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee of, or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the laws and regulations of that Party, by financial service suppliers in competition with public entities or private institutions.

PUBLIC

ARTICLE 8.53

Self-regulatory organisations

If a Party requires membership of, participation in, or access to, any self-regulatory organization in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, that Party shall ensure observance of the obligations under Articles 8.8 and 8.9 as well as Articles 8.14 and 8.15.

PUBLIC

ARTICLE 8.54

Clearing and payment systems

Under terms and conditions that accord national treatment, each Party shall, subject to each Party's access criteria, grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 8.55

Regulatory dialogue in the area of financial services

1. The Parties hereby establish a dialogue on the regulation of the financial services sector with a view to improving mutual knowledge of their respective regulatory systems and to co-operating in the development of international standards.

2. Issues regarding financial services that a Party communicates to the other Party shall be agreed by the Parties prior to the dialogue.

3. The Parties may meet in person, including in the margins of international fora, or by any other appropriate means of communication, such as videoconference or teleconference, as agreed by the Parties.

4. Participants in the regulatory dialogue shall be financial services experts and representatives of authorities in charge of financial services policy.

PUBLIC

SUB-SECTION 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

PUBLIC

ARTICLE 8.56

Scope, definitions and principles

1. In addition to Sections B, C and D[1], this Sub-Section shall apply to measures of a Party affecting the supply of international maritime transport services.

2. For the purposes of this Sub-Section and Sections B, C and D:

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance services" or "customs house brokers services" means activities consisting in carrying out for and on behalf of another party customs formalities concerning import, export or through movement or storage of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

[1] For greater certainty, reference to Sections B, C and D in this Sub-Section includes the relevant Annexes to this Chapter.

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "feeder services" means, without prejudice to the scope of activities which might be considered as cabotage under the relevant national legislation, the pre- and onward transportation by sea of international cargo, between ports located in the territory of a Party and provided such international cargo is "*en route*", that is, directed to a destination, or coming from a port of shipment, outside the territory of that Party;

(e) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(f) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between a port of one Member State and a port of another Member State;

(g) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country; that includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services;

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(h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; or

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(i) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and

(j) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies; the activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

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(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery, and safekeeping of cargoes before shipment or after discharge.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

(a) each Party, without prejudice to the limitations, conditions and qualifications set out in Articles 8.10 and 8.17, shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, *inter alia*, access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

4. In applying the principles referred to in point (a) and (b) of paragraph 3, the Parties shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and where identified, not implement and endeavour to terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

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(b) upon the entry into force of this Agreement, endeavour to abolish, and abstain from introducing any unilateral measures that could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall allow international maritime service suppliers of the other Party to establish and operate an enterprise in its territory in accordance with the conditions laid down in the relevant Annex to this Chapter.

6. Where available, the Parties shall provide access to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, to the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captains services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

7. Each Party, subject to the authorisation by the competent authority where applicable, shall allow international maritime transport service suppliers of the other Party to provide feeder services.

PUBLIC

SUB-SECTION 7

COMPUTER SERVICES

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ARTICLE 8.57

Understanding on computer services

1. The Parties subscribe to the understanding that, for the purposes of liberalising trade in services in accordance with this Chapter, computer and related services, regardless of whether they are delivered via a network, including the internet, include:

(a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

(b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs;

(c) data processing, data storage, data hosting or database services;

(d) maintenance and repair services for office machinery and equipment, including computers; or

(e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

2. For greater certainty, services enabled by computer and related services, other than those listed in paragraph 1, shall not be regarded as computer and related services in themselves.

PUBLIC

CHAPTER 9

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS

ARTICLE 9.1

Current account

Without prejudice to other provisions of this Agreement, each Party shall allow any payments, in a freely convertible currency and in accordance with the provisions of the Articles of Agreement of the International Monetary Fund, with regard to transactions on the current account of the balance of payments between the Parties, which fall under the scope of this Agreement.

ARTICLE 9.2

Capital movements

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital relating to investments and transactions liberalised in accordance with Section B of Chapter 8 (Liberalisation of Investment and Trade in Services).

2. The Parties shall consult each other in the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property (hereinafter referred to as the "Committee" for the purposes of this Chapter) with a view to facilitating the movement of capital between them in order to promote trade and investment.

ARTICLE 9.3

Application of laws and regulations relating to capital movements, payments or transfers

1. Articles 9.1 and 9.2 shall not preclude a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency, the protection of the right of creditors, bank recovery and resolution, or the prudential supervision of financial institutions;

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(b) issuing, trading or dealing in financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers if necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial proceeding; or

(f) social security, public retirement or compulsory savings schemes.

2. Laws and regulations as referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or in a manner which constitutes a disguised restriction on capital movements, payments or transfers.

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ARTICLE 9.4

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of the economic and monetary policies, in the case of Indonesia, or for the economic and monetary union, in the case of the Union, or threat thereof, Indonesia or the Union, respectively, may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months.[1] Those measures shall be strictly necessary to address those difficulties.

ARTICLE 9.5

Restrictions in case of balance-of-payments and external financing difficulties

1. If a Party experiences serious balance-of-payments or external financial difficulties, or there exists a threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.[2]

[1] For greater certainty, those measures can be renewed for additional periods of six months, provided that they remain strictly necessary under the current circumstances. Those measures are not subject to the notification and consultation procedure envisaged in paragraphs 5, 6 and 7 of Article 9.5.

[2] In the case of the Union, those measures may be taken by a Member State in situations other than those referred to in Article 9.4, which affect the economy of that Member State. For greater certainty, serious balance-of-payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) not exceed those necessary to deal with the situation referred to in paragraph 1;

(c) be temporary and shall be phased out progressively as the situation referred to in paragraph 1 improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) not treat the other Party less favourably than third countries in like situations.

3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be consistent with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994.

4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be consistent with Article XII of GATS.

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5. A Party that adopts or maintains measures as referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

6. If a Party adopts or maintains restrictions pursuant to this Article, the Parties shall promptly hold consultations in the Committee, unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, amongst others, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial difficulties of the Party concerned.

8. For greater certainty, consultations pursuant to paragraph 6 shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

PUBLIC

CHAPTER 10

DIGITAL TRADE

PUBLIC

SECTION A

GENERAL PROVISIONS

ARTICLE 10.1

Objective and scope

1. The Parties recognise the economic growth and opportunities provided by digital trade and the importance of promoting consumer confidence in electronic commerce and facilitating its use and development.

2. This Chapter applies to measures of a Party affecting trade enabled by electronic means.

3. This Chapter does not apply to data held or processed by or on behalf of a Party, or measures related to such data[1], including measures related to its collection, storage or processing.

[1] For greater certainty, such measures include those relating to computing facilities or network elements used for the collection, storage or processing of such data.

4. Articles 10.5, 10.8, and 10.13 shall not prevent a Party from adopting or maintaining a measure in accordance with the conditions inscribed in its schedule of Specific Commitments, as set out in Annex 8-A (Schedule of Commitments on Cross-Border Supply of Services – Union) and Annex 8-B (Schedule of Specific Commitments on Liberalisation of Investment – Union) for the Union, and Annex 8-E (Schedule of Commitments on Cross-Border Supply of Services – Indonesia) and 8-F (Schedule of Specific Commitments on Liberalisation of Investment – Indonesia) for Indonesia.

5. This Chapter does not apply to audio-visual services.

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ARTICLE 10.2

Definitions

For the purposes of this Chapter:

(a) "consumer" means any natural person using or requesting a publicly available electronic communications service for purposes other than trade, business, craft or profession;

(b) "covered person" means:

(i) a covered enterprise as defined in Article 1.3;

(ii) an investor as defined in Article 1.3; or

(iii) a service supplier of a Party as defined in Article 1.3;

(c) "direct marketing communication" means any form of advertising by which a natural or juridical person communicates marketing messages directly to end-users via a public electronic communications network and covers at least electronic mail and text and multimedia messages (SMS and MMS);

(d) "electronic authentication service" means a service that enables the confirmation of:

(i) the electronic identification of a person; or

(ii) the origin and integrity of data in electronic form;

(e) "electronic seal" means data in electronic form used by a juridical person which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;

(f) "electronic signature" means data in electronic form which is attached to or logically associated with other electronic data and is:

(i) used by a natural person to agree on the electronic data to which it relates; and

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(ii) linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable;

(g) "electronic trust service"[1] means an electronic service consisting of the creation, verification, and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery, website authentication and electronic certificates related to those services;

(h) "end-user" means any natural or juridical person using or requesting a publicly available electronic communications service, either as a consumer or for trade, business or professional purposes; and

(i) "personal data" means any information relating to an identified or identifiable natural person.

ARTICLE 10.3

Right to regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment including climate change, public morals, social or consumer protection, or the promotion and protection of cultural diversity.

[1] Electronic trust services may also refer to electronic services certified in accordance with relevant laws and regulations of the Parties.

ARTICLE 10.4

Exceptions

Nothing in this Chapter prevents a Party from adopting or maintaining measures in accordance with Articles 8.49, 23.1 and 23.2 for the public interest reasons set out therein.

PUBLIC

SECTION B

DATA FLOWS AND PERSONAL DATA PROTECTION

ARTICLE 10.5

Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade and recognise that each Party may have its own regulatory requirements in this regard.

2. To that end, cross-border data flows between the Parties for the conduct of the business of covered persons shall not be restricted by a Party by[1]:

(a) requiring the use of computing facilities or network elements in that Party's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of that Party[2];

(b) requiring the localisation of data in that Party's territory for storage or processing;

(c) prohibiting storage or processing in the territory of the other Party; or

(d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in that Party's territory or upon localisation requirements in that Party's territory.

3. Each Party shall keep the implementation of this Article under review and assess its functioning within three years of the entry into force of this Agreement, unless the Parties agree otherwise. A Party may at any time propose to the other Party a review of the list of restrictions set out in paragraph 2. That proposal shall be accorded sympathetic consideration.

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1 For greater certainty, the competent authority of a Party may require access to data for law enforcement or regulatory oversight in accordance with paragraph 2 of this Article and if relevant, subject to Articles 8.49, 23.1 and 23.2.

2 Recalling Article 10.3, the Parties reaffirm their respective right to regulate in accordance with this Agreement to achieve legitimate policy objectives, including ensuring security and stability of telecommunications infrastructure.

ARTICLE 10.6

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards[1] in this regard contribute to economic and social benefits, trust in the digital economy and to the development of trade.

2. Each Party may adopt and maintain the legal framework it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. This Agreement shall not affect the protection of personal data and privacy afforded by the Parties' respective legal frameworks or otherwise require the Parties to adopt or maintain a specific framework for the protection of personal data and privacy protection.

3. Each Party shall inform the other Party about any legal framework it adopts or maintains as referred to in paragraph 2.

[1] For greater certainty, the Parties share the understanding that high standards of protection can be ensured through different instruments and safeguards.

SECTION C

SPECIFIC PROVISIONS

PUBLIC

ARTICLE 10.7

Customs duties on electronic transmissions

1. A Party shall not impose customs duties on electronic transmissions.[1]

2. For greater certainty, the Parties agree that consistent with the principles of GATS, trade in services is not subject to customs duties.

3. Paragraph 1 is in accordance with the WTO Ministerial Decision (WT/MIN (24)/38), adopted on 2 March 2024, in relation to the WTO Work Programme on Electronic Commerce.

4. Paragraph 1 is without prejudice to a Party's right to act in light of any further WTO Ministerial Decisions or Agreement in relation to the WTO Work Programme on Electronic Commerce. Such right shall be without prejudice to that Party's commitments pursuant to Article 2.5.

[1] This paragraph is without prejudice to the Parties' position on whether electronic transmissions should be categorised as trade in services or goods.

5. For greater certainty, paragraphs 1 to 4 shall not preclude a Party from applying customs procedures for public policy purposes, or from imposing internal taxes, fees or other charges on electronic transmission, provided that such taxes, fees, or charges are imposed in a manner consistent with the WTO Agreement.

PUBLIC

ARTICLE 10.8

No prior authorisation

1. A Party shall not require prior authorisation solely on the grounds that a service is provided by electronic means or adopt or maintain any other requirement having equivalent effect.

2. For greater certainty, a Party is not precluded from requiring prior authorisation for an online service, or from adopting or maintaining any other requirement having an equivalent effect, based on other policy grounds, such as consumer protection.

3. Paragraph 1 does not apply to:

(a) telecommunications services, broadcasting services, gambling services and legal representation services; or

(b) services of notaries or equivalent professions or other relevant services, to the extent that they involve a direct and specific connection with the exercise of public authority.

ARTICLE 10.9

Conclusion of contracts by electronic means

Except as otherwise provided for under the laws and regulations of each Party, each Party shall ensure that its legal system allows contracts to be concluded by electronic means and that the legal requirements for contractual processes neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effect and validity for having been made by electronic means.[1]

PUBLIC

ARTICLE 10.10

Electronic trust and authentication services

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic trust and electronic authentication service solely on the basis that the service is in electronic form.

2. A Party shall not adopt or maintain measures regulating electronic trust and electronic authentication services that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or

[1] For greater certainty, certain requirements for the legal effect and validity of contracts as provided in the laws and regulations of each Party shall not be considered as obstacles for the use of electronic contracts.

(b) prevent parties to an electronic transaction from having the opportunity to prove to judicial and administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust and electronic authentication services.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards which shall be objective, transparent and non-discriminatory or is certified by an authority accredited in accordance with its laws and regulations.

PUBLIC

ARTICLE 10.11

Online consumer trust

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures that contribute to consumer trust, including measures that protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. For the purposes of paragraph 1, each Party shall adopt or maintain measures that contribute to consumer trust, including measures that proscribe fraudulent and deceptive commercial practices.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to electronic commerce in order to protect consumers and enhance consumer trust.

PUBLIC

ARTICLE 10.12

Unsolicited direct marketing communications

1. Each Party shall ensure that end-users are effectively protected against unsolicited direct marketing communications. To this end, the following paragraphs shall apply.

2. Each Party shall ensure that natural and juridical persons do not send direct marketing communications to consumers who have not given their prior consent to receiving such market communications.[1]

3. Notwithstanding paragraph 2, each Party shall allow natural and juridical persons who have collected, in accordance with the laws and regulations of that Party, a consumer's contact details in the context of the sale of a product or a service, to send direct marketing communications to that consumer for their own similar products or services.

4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

1 Prior consent shall be defined in accordance with each Party's own laws and regulations.

ARTICLE 10.13

Transfer of or access to source code

1. A Party shall not require the transfer of, or access to, the source code of software owned by a juridical or natural person of the other Party as a condition for the import, export, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For greater certainty:

(a) Articles 8.49, 23.1 and 23.2 may apply to measures of a Party adopted or maintained, for instance, in the context of a certification procedure;

(b) paragraph 1 does not apply to the voluntary transfer of or granting of access to source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract; and

(c) paragraph 1 does not affect the right of regulatory, law enforcement or judicial bodies of a Party to require the modification of source code software to comply with its laws and regulations that are not inconsistent with this Agreement.

PUBLIC

3. This Article shall not affect:

(a) the right of regulatory authorities, law enforcement, judicial or conformity assessment bodies[1] of a Party to require the transfer of, or access to, source code of software, either prior to or following import, export, distribution, sale or use of such software, for investigation, inspection or examination, enforcement action or judicial proceeding purposes, to secure compliance with its laws or regulations pursuing legitimate public policy objectives[2], subject to safeguards against unauthorised disclosure;

(b) requirements by a court, administrative tribunal, competition authority or other relevant body of a Party to remedy a violation of competition laws; or requirements pursuant to that Party's laws or regulations that are not inconsistent with the Agreement to provide proportionate and targeted access to the source code of software that is necessary to address barriers to entry in digital markets to ensure these markets remain competitive, fair, open and transparent;

(c) the protection and enforcement of intellectual property rights; or

(d) a public procurement transaction.

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[1] For the purposes of this Article, "conformity assessment body" means a relevant governmental body or authority of a Party, or non-governmental body in the exercise of powers delegated by a governmental body or authority of the Party, carrying out the procedures of assessment of conformity with applicable laws or regulations of that Party.

[2] For the purposes of this Article, "legitimate public policy objective" shall be interpreted in an objective manner and shall enable the pursuit of objectives such as to protect public security, public morals, or human, animal or plant life or health, to maintain public order, to protect other fundamental interests of society such as cybersecurity, safe and trustworthy artificial intelligence, or protecting against the dissemination of disinformation, or other similar objectives of public interest, taking into account the evolving nature of digital technologies and related challenges.

ARTICLE 10.14

Cybersecurity

PUBLIC

1. The Parties recognise that threats to cybersecurity undermine confidence in digital trade.

2. In order to identify and mitigate threats to cybersecurity and thereby facilitate digital trade, the Parties recognise the importance of:

(a) building the capabilities of their respective national entities responsible for cybersecurity incident response; and

(b) using collaboration mechanisms, as appropriate, to cooperate, anticipate, identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks of Parties and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices.

3. Given the evolving nature of cybersecurity threats and their negative impact on electronic commerce, the Parties recognise that risk-based approaches are generally effective in addressing those threats and minimising trade barriers. Accordingly, each Party shall endeavour to employ, and shall encourage enterprises within its jurisdiction to use, risk-based approaches that rely on open and transparent standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity incidents.

ARTICLE 10.15

Regulatory cooperation

PUBLIC

1. The Parties shall maintain a dialogue on regulatory issues raised by digital trade, which shall among others address the following issues:

(a) the recognition and facilitation of interoperable cross-border electronic trust and authentication services;

(b) the treatment of direct marketing communications;

(c) the protection of consumers in the ambit of electronic commerce including building consumer confidence;

(d) the challenges for SMEs in digital trade; and

(e) any other matter relevant for the development of digital trade.

2. The dialogue referred to in paragraph 1 shall focus on the exchange of information on the Parties' respective laws and regulations covering the matters referred to in points (a) to (e) of paragraph 1 as well as on the implementation of those laws and regulations.

3. Recognising the global nature of electronic commerce, the Parties shall endeavour to cooperate to:

(a) assist SMEs to overcome obstacles to its use;

(b) exchange information and share views on consumer access to products and services offered online; and

(c) encourage business sectors to develop methods or practices that enhance consumer confidence to foster the use of electronic commerce.

4. Each Party shall, if appropriate, cooperate and participate actively in international fora to promote the development of digital trade.

PUBLIC

CHAPTER 11

GOVERNMENT PROCUREMENT

PUBLIC

ARTICLE 11.1

Scope and coverage

1. This Chapter applies to any measure relating to a covered procurement, whether or not it is conducted exclusively or partially by electronic means.

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

(a) of a good, a service, or any combination thereof:

(i) as specified in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia); and

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

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

(c) for which the value, as estimated in accordance with paragraphs 6, 7 and 8, equals or exceeds the relevant threshold specified in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia), at the time of publication of a notice in accordance with Article 11.6;

(d) by a procuring entity as specified in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia); and

(e) that is not otherwise excluded from coverage in paragraph 3 or in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia).

3. Except as otherwise provided in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia), this Chapter does not apply to:

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

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

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(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) goods or services that are procured in-house by a covered procuring entity;

(f) procurement conducted:

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

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

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance.

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4. A procurement subject to this Chapter shall be all procurement covered by Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia), in which each Party's commitments are set out as follows:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, all other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any general notes, including transitional measures for the application of this Chapter; and

(h) in Section H, the publication media in which the Party publishes its procurement notices, award notices, and other information related to its public procurement system as set out in this Chapter.

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5. If a procuring entity, in the context of covered procurement, requires other entities or a person whose procurement is not covered under Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) to procure in accordance with particular requirements, Article 11.4 shall apply *mutatis mutandis* to those requirements.

6. In estimating the value of a 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 select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) if the procurement provides for the possibility of options, the total value of those options.

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7. If an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts") the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, if possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of a good or a service, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

PUBLIC

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) if it is not certain whether the contract is to be a fixed-term contract, point (b) shall be used.

PUBLIC

ARTICLE 11.2

Definitions

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, based on Division 51 of the CPC;

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

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

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

(f) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(g) "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;

(h) "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;

(i) "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 action or requirement;

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

(k) "procuring entity" means an entity covered under a Party's market access schedule in Sections A, B or C of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia);

(l) "publish" means to disseminate information in paper format or by electronic means that is distributed widely and is accessible to the general public;

PUBLIC

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

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

(o) "services" includes construction services, unless otherwise specified in this Chapter;

(p) "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 and that 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;

(q) "supplier" means a person or group of persons that provides or could provide goods or services to a procuring entity; and

(r) "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.

PUBLIC

ARTICLE 11.3

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or from not disclosing any information that it considers necessary for the protection of its essential security interests relating to:

(a) the procurement of arms, ammunition or war material;

(b) procurement indispensable for national security; or

(c) procurement for national defence purposes.

2. Provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties if the same conditions prevail or a disguised restriction on international trade, 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

PUBLIC

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

PUBLIC

ARTICLE 11.4

General principles

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 the other Party and to the suppliers of the other Party offering the goods or services of the other Party treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and suppliers.

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 the 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 covered procurement are goods or services of the other Party.

3. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a juridical person are accorded national treatment with regard to any government procurement of the Party in its territory. This obligation applies irrespectively of whether or not the procurement is covered by Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) and is subject to the general exceptions in Article 11.3.

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

(a) ensure that the covered 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.

5. The Parties shall conduct covered procurement by electronic means to the widest extent possible and shall endeavour to cooperate in developing and expanding the use of electronic means in covered procurement systems. When conducting covered procurement by electronic means, a procuring entity shall use electronic means of information and communication for the publication of notices and tender documentation in covered procurement procedures and shall use electronic means for the submission of tenders to the widest extent practicable.

PUBLIC

6. Each Party shall endeavour to establish a single electronic system to facilitate the procurement process which covers procurement planning, procurement preparation, selection of suppliers, contract management, and the award of contracts.

7. 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.

8. Nothing in this Chapter shall prevent a Party, including its procuring entities, from developing new procurement policies, procedures, or contractual means, provided that they are not inconsistent with this Chapter.

9. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the Party.

PUBLIC

10. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset, unless otherwise provided in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia).

11. Paragraphs 1 and 2 shall be without prejudice to each Party's commitments under Chapter 2 (National Treatment and Market Access for Goods) and Chapter 8 (Liberalisation of Investment and Trade in Services), and for greater certainty, those paragraphs shall not apply to customs duties and charges of any kind imposed on, or in connection with importation, the method of levying those duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 11.5

Information on the procurement system

1. Each Party shall:

(a) promptly publish laws, regulations, judicial decisions, administrative rulings of general application, standard contract clauses mandated by laws or regulations and incorporated by reference in notices or tender documentation and procedures regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

PUBLIC

(b) on request of the other Party, provide an explanation thereof to the other Party.

2. Each Party shall list in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) respectively:

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1;

(b) the electronic or paper media in which the Party publishes the notices required by Articles 11.6, 11.8(8), and 11.16(2); and

(c) the website address or addresses if the Party publishes its notices concerning awarded contracts pursuant to Article 11.16(2).

3. Each Party shall promptly notify the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property (hereinafter referred to as the "Committee" for the purposes of this Chapter) of any modification to the Party's information listed in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) respectively.

PUBLIC

ARTICLE 11.6

Notices

PUBLIC

1. All notices (notices of intended procurement, summary notices and notices of planned procurement), shall be directly accessible by electronic means free of charge through a single point of access online. The notices may also be published in an appropriate paper medium which shall be widely disseminated and shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice. If notices are not available in English, at least summary notices shall be made available in English.

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 11.13.

3. 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 covered procurement, and their cost and terms of payment, if any;

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

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended covered procurement;

(d) a description of options, if any;

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

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

(g) if applicable, the address and any final date for the submission of requests for participation in the covered procurement;

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

(i) 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;

(j) 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 those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

PUBLIC

(k) if, pursuant to Article 11.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

4. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English. The summary notice shall contain at least the following information:

(a) the subject-matter of the covered procurement;

(b) the final date for the submission of tenders or, if applicable, any final date for the submission of requests for participation in the covered procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the covered procurement may be requested.

PUBLIC

5. Procuring entities are encouraged to publish in the appropriate electronic and, if available, paper medium listed in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia) as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as the "notice of planned procurement"). The notice of planned procurement shall also be published in the single point of access site listed in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) respectively, subject to an appropriate paper and electronic medium as referred to in paragraph 1. The notice of planned procurement should include the subject-matter of the covered procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered under Sections B or C of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the procuring entity and a statement that interested suppliers should express their interest in the covered procurement to the procuring entity.

PUBLIC

ARTICLE 11.7

Conditions for participation

1. A procuring entity 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 covered procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a covered procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience if essential to meet the requirements of the covered procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the covered procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) 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; and

PUBLIC

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

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

(a) bankruptcy;

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

(f) failure to pay taxes.

PUBLIC

ARTICLE 11.8

Qualification of suppliers

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, to the extent possible, through electronic means.

2. If a Party or one of its procuring entities, pursuant to paragraph 1, maintains a supplier registration system, it shall endeavour to ensure that interested suppliers have access to information on the registration system, if possible through electronic means, and that they may request registration at any time. The competent authority shall inform interested suppliers within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

3. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

4. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its covered procurement.

PUBLIC

5. If a procuring entity intends to use selective tendering, the procuring entity shall:

(a) include in the notice of intended procurement at least the information specified in points (a), (b), (f), (g), (j), (k) and (l) of Article 11.6(3) and invite suppliers to submit a request for participation;

(b) provide, by the commencement of the time-period for tendering, at least the information in points (c), (d), (e), (h) and (i) of Article 11.6(3) to the qualified suppliers that it notifies as specified in point (b) of Article 11.11(3); and

(c) address invitations to submit a tender to a number of suppliers that is sufficient to ensure effective competition.

6. A procuring entity shall allow all qualified suppliers to participate in a particular covered 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.

7. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5, 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 6.

PUBLIC

8. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is made available in the appropriate medium listed in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia) respectively.

9. The notice provided for in paragraph 8 shall include:

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

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

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

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

PUBLIC

11. A procuring entity shall promptly inform any supplier that submits an application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

12. If a procuring entity rejects a supplier's 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 reasons for its decision.

PUBLIC

ARTICLE 11.9

Technical specifications and tender documentation

1. A procuring entity shall not prepare, adopt or apply any technical specification or 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, if 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, if they exist; otherwise, on national technical regulations, recognised national standards or building codes.

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

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the covered procurement requirements and provided that, in such a case, 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 covered procurement from a person that may have a commercial interest in the covered procurement.

PUBLIC

6. 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 in the notice of intended procurement, that documentation shall include a complete description of:

(a) the covered procurement, including the nature and the quantity of the goods or services to be procured or, if 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 the 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, unless price is the sole criterion, the relative importance of that criteria;

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

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

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

PUBLIC

(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.

7. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account factors such as the complexity of the covered procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

8. The evaluation criteria set out in the notice of intended procurement or tender documentation may include price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery. Those criteria, if applicable, shall be based on relevant and mutually recognised international standards.

9. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) 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.

PUBLIC

10. If, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all those modifications or the 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 those suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

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

PUBLIC

ARTICLE 11.10

Market consultations

1. Before launching a covered procurement, procuring entities may conduct market consultations with a view to preparing the covered procurement, notably for the development of technical specifications.

2. For that purpose, procuring entities may seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in violation of the principles as established in Article 11.4.

ARTICLE 11.11

Time periods

PUBLIC

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the covered procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

These time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation is not, in principle, less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders that time period impracticable, the time period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders is not less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders.

4. A procuring entity may reduce the time period for tendering referred to in paragraph 3 to not less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in Article 11.6(5) at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the covered procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the covered procurement to the procuring entity;

(iv) the address from which documents relating to the covered procurement may be obtained; and

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(v) as much of the information that is required for the notice of intended procurement under Article 11.6(3), as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering referred to in paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering referred to in paragraph 3 by five days for each of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

6. The application of paragraph 5, in conjunction with paragraph 4, shall not result in the reduction of the time period for tendering referred to in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

PUBLIC

7. Notwithstanding any other provision in this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering referred to in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the procuring entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to not less than 10 days.

8. If a procuring entity covered under Sections B or C of Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of such agreement, the time period shall be not less than 10 days.

PUBLIC

ARTICLE 11.12

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations with suppliers:

(a) if the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 11.6(3); or

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

2. A procuring entity shall:

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

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

PUBLIC

ARTICLE 11.13

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 the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 11.6, 11.7, 11.8, paragraphs 6 to 10 of Article 11.9, and Articles 11.11, 11.12, 11.14 and 11.15 under any of the following circumstances:

(a) if in response to a notice of intended procurement and provided that the procuring entity does not substantially modify the requirements of the tender documentation:

(i) no tenders were submitted or no suppliers 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;

PUBLIC

(b) if 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 of goods or services that were not included in the initial procurement, if a change of supplier for those additional goods or 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 for the procuring entity;

(d) if strictly necessary, 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 open tendering or selective tendering;

(e) for goods purchased on a commodity market;

PUBLIC

(f) if a procuring entity procures a prototype or a first good or service 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;

(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;

(h) if 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 the winner; or

(i) for legal services, including the services of an arbitrator, the need for which was not envisaged by the procuring entity but which are required to assist the procuring entity to address matters that cannot be postponed.

PUBLIC

2. The 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.

PUBLIC

ARTICLE 11.14

Electronic auctions

If a procuring entity intends to conduct a covered procurement using an electronic auction, the procuring entity shall, if applicable, 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 if 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 11.15

Treatment of tenders and award of contracts

PUBLIC

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.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form, the procuring entity shall provide the same opportunity to all participating suppliers.

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

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the procuring entity 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) if price is the sole criterion, the lowest price.

6. If 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.

7. A procuring entity shall not use options, cancel a covered procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

8. The Parties shall, as a general rule, provide for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

ARTICLE 11.16

Transparency of procurement information

1. A procuring entity shall promptly inform participating suppliers of the procuring entity's contract award decisions and, on request of a supplier, shall do so in writing. Subject to Articles 11.17(2) and 11.17(3) a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons the procuring entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

PUBLIC

2. Not later than 30 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section H of Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia). If the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

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

(b) the name 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 if limited tendering was used in accordance with Article 11.13, a description of the circumstances justifying the use of limited tendering.

PUBLIC

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 11.13; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

4. The Parties shall exchange statistics on covered procurement on a regular basis.

PUBLIC

ARTICLE 11.17

Disclosure of information

1. On request of a Party, the other Party shall provide promptly any information necessary to determine whether a covered procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. If release of the 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 consent of, the Party that provided the information.

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if 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 11.18

Domestic review procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of a provision of this Chapter; or

PUBLIC

(b) if the supplier does not have a right to challenge directly a breach of the Chapter under the laws and regulations of a Party, a failure to comply with a measure of a Party implementing a provision of 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 challenges shall be in writing and made publicly 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 conducting the covered procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future covered procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which shall be at least 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge concerning the result of a procurement process by a supplier arising in the context of a covered procurement.

PUBLIC

5. If a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose covered procurement is the subject of the challenge.

6. Each Party shall ensure that a decision of a review body that is not a court shall be subject to judicial review or that the review body has procedures that provide that:

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

(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body 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.

PUBLIC

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

(a) rapid interim measures to preserve a supplier's opportunity to participate in the covered procurement; those interim measures may result in 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 those interim measures should be applied; just cause for not acting shall be provided in writing; and

(b) corrective action or compensation for the loss or damages suffered, if a review body has determined that there has been a breach or a failure as referred to in paragraph 1.

PUBLIC

ARTICLE 11.19

Cooperation on government procurement

1. The Parties shall cooperate, on mutually agreed terms, on matters relating to government procurement with a view to:

(a) increasing the understanding of their respective government procurement systems and markets; and

(b) improving the capacity of stakeholders of the Parties with an interest in government procurement.

2. Cooperation referred to in paragraph 1 shall include:

(a) sharing information on best practices for government procurement including on electronic procurement systems, fostering the participation of SMEs in covered procurement;

(b) exchanging information on the Parties' laws, regulations and procedures, and any modifications thereof; and

(c) to the extent possible, the provision of training, technical assistance or capacity building and sharing information thereon.

PUBLIC

ARTICLE 11.20

Modifications and rectifications to coverage

1. The Union may modify or rectify Annex 11-A (Government Procurement Market Access Schedule of the Union) and Indonesia may modify or rectify Annex 11-B (Government Procurement Market Access Schedule of Indonesia), in accordance with paragraphs 2 to 9.

2. If a Party intends to modify its Annex referred to in paragraph 1, the Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding point (b) of paragraph 2, a Party need not provide compensatory adjustments if the modification covers a procuring entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of procuring entities listed in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) is deemed to be effectively eliminated insofar as a procuring entity's procurement is concerned, if the procuring entity performs a competitive activity.

4. If the other Party disputes that:

(a) an adjustment proposed under point (b) of paragraph 2 is appropriate; or

(b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence under paragraph 3;

it must object in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 2. If no objection is submitted, the Party shall be deemed to have accepted the proposed adjustment or modification.

PUBLIC

5. The following changes to Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia) shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in the relevant Annex:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed within an Annex; and

(c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

6. In the case of proposed rectifications to an Annex as referred to in paragraph 1, the Party shall notify the other Party every two years after the Trade Committee takes a decision to amend the Annexes pursuant to Article 24.2.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days after having received the notification referred to in paragraph 6. If a Party submits an objection, it shall set out the reasons it believes the proposed rectification is not a change as provided for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia). If no objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

PUBLIC

8. If a Party objects to the proposed modification or the proposed compensatory adjustments referred to in point (b) of paragraph 2 or to the proposed rectification referred to in paragraph 6, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 120 days of receipt of the objection, the Party seeking to modify or rectify its Annex as referred to in paragraph 1 may refer the matter to dispute settlement in accordance with Chapter 22 (Dispute Settlement), to determine whether the objection is justified.

9. The proposed modification or rectification shall take effect only when the Parties have agreed or on the basis of a final decision of a panel established under Chapter 22 (Dispute Settlement).

PUBLIC

ARTICLE 11.21

Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property

This Article complements and further specifies Article 24.4. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee established pursuant to Article 24.4 shall include:

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

(b) exchanging views on laws and regulations, policies and practices, and other mutually agreed issues regarding government procurement;

(c) discussing ways to facilitate cooperation between relevant entities of the Parties in the field of government procurement;

(d) reporting the findings to the Trade Committee; and

(e) carrying out other functions as may be delegated by the Trade Committee in accordance with Article 24.2.

PUBLIC

ARTICLE 11.22

Non-application of dispute settlement[1]

Until the Trade Committee takes a decision to amend Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia) in accordance with Article 24.2 following negotiations pursuant to Article 11.23, Chapter 22 (Dispute Settlement) does not apply to any dispute arising from the interpretation and application of this Chapter in relation to covered procurement.

[1] The Parties share the understanding that the negotiations as referred to in Article 11.23 include the application of Chapter 22 (Dispute Settlement) to any dispute arising from the interpretation and application of this Chapter in relation to covered procurement.

ARTICLE 11.23

Further negotiations

The Parties shall enter into negotiations on market access between the Parties, within five years and not sooner than three years from the entry into force of this Agreement, unless the Parties agree otherwise. Following these negotiations, the Trade Committee may decide pursuant to Article 24.2 to amend Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia).

PUBLIC

ARTICLE 11.24

Technical consultations

1. The Parties shall seek to resolve any concerns arising from the implementation of this Chapter through technical consultations pursuant to this Article prior to initiating dispute settlement pursuant to Chapter 22 (Dispute Settlement). The technical consultations shall endeavour to arrive at a mutually satisfactory resolution of the concerns.[1]

[1] For greater certainty, technical consultations pursuant to this Article shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

2. For the purposes of paragraph 1, any Party may make a request (hereinafter referred to as "requesting Party" for the purposes of this Article) to the other Party (hereinafter referred to as "requested Party" for the purposes of this Article) to hold technical consultations. The request shall be made in writing[1] and identify:

(a) the matter or measure at issue;

(b) the provisions of this Chapter to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measures or matters.

3. On request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or by any technological means available to the Parties. If the meeting is held in person, it shall be held in the capital of the requested Party, unless the Parties agree otherwise.

4. The Parties shall endeavour to resolve the matter as expeditiously as possible within 60 days from the date of receipt of the request. If the requesting Party believes that the matter is urgent and require immediate settlement, it may request a shorter time frame. In those cases, the requested Party shall give positive consideration to that request.

5. A Party may request or exchange further information relevant to paragraph 2, and the information obtained or communications between the Parties under this Article shall be confidential unless the Parties agree otherwise.

[1] If the request is sent by electronic means, the requested Party shall promptly confirm the receipt of that request and no later than within 14 calendar days of receipt.

PUBLIC

6. Any resolution reached between the Parties as a result of technical consultations under this Article shall be notified to the Trade Committee and shall be without prejudice to the rights of the Parties in any further proceedings, and only be used in the framework of this Agreement.

PUBLIC

ARTICLE 11.25

International assistance

Notwithstanding the provisions in points (f)(i) and (iii) of Article 11.1(3), with regard to any procurement or part thereof funded by international grants, loans or other assistance of the other Party, each Party shall grant national treatment to suppliers, goods and services of the Parties, unless otherwise agreed by the parties under a relevant grant or loan agreement. This obligation applies irrespective of whether or not the procurement is covered by Annex 11-A (Government Procurement Market Access Schedule of the Union) or Annex 11-B (Government Procurement Market Access Schedule of Indonesia).

CHAPTER 12

INTELLECTUAL PROPERTY

PUBLIC

SECTION A

GENERAL PROVISIONS

ARTICLE 12.1

Objectives

1. The objectives of this Chapter are to:

(a) promote cooperation on the protection and enforcement of intellectual property rights;

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights;

(c) promote the production and commercialisation of innovative and creative products in each Party; and

(d) reduce impediments to trade in innovative and creative goods and services and incentivise investments in a manner conducive to a more sustainable and inclusive economy.

2. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to the balance of rights and obligations pursuant to Article 7 of the TRIPS Agreement.

PUBLIC

ARTICLE 12.2

Nature and scope of obligations

1. This Chapter complements and further specifies the rights and obligations of each Party under the TRIPS Agreement and other international agreements in the field of intellectual property, to which they are parties.

2. For the purposes of this Chapter, intellectual property refers at least to all categories of intellectual property that are covered by Sections 1 to 7 of Part II of the TRIPS Agreement or Articles 12.9 to 12.44 of this Chapter. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property, adopted at Paris on 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as the "Paris Convention").

3. This Chapter does not preclude a Party from applying provisions of that Party's law providing higher standards for the protection or enforcement of intellectual property rights than those required by this Chapter, provided that they do not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its legal system and policies.

PUBLIC

ARTICLE 12.3

TRIPS Agreement and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (hereinafter referred to as the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Chapter, each Party shall ensure consistency with the Doha Declaration.

2. Nothing in this Chapter shall limit a Party's rights and obligations pursuant to Article 31 and Article 31*bis* of the TRIPS Agreement, and the Annex thereto and the Appendix to the Annex to the TRIPS Agreement.

ARTICLE 12.4

Exhaustion

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

PUBLIC

ARTICLE 12.5

National treatment

1. In respect of the intellectual property rights covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights, subject to the exceptions provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works, adopted at Bern on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979 (hereinafter referred to as the "Berne Convention"), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Chapter.

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, provided that those exceptions are:

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

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

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organisation (hereinafter referred to as "WIPO") relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 12.6

Genetic resources, traditional knowledge and traditional cultural expressions

1. The Parties recognise the importance and value of genetic resources and associated traditional knowledge.

PUBLIC

2. The Parties acknowledge that the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications may promote the transparency of the patent system with regard to genetic resources and associated traditional knowledge.

3. The Parties affirm the importance of working towards a multilateral outcome on intellectual property related aspects of genetic resources and associated traditional knowledge and of the work carried out on traditional knowledge and traditional cultural expressions by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

PUBLIC

ARTICLE 12.7

Transfer of technology

The Parties agree to exchange views and information on their law and international practices on the protection and enforcement of intellectual property rights regarding the transfer of technology. This shall in particular include exchanges on measures to facilitate information flows, business partnerships and voluntary licensing and subcontracting agreements. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the Party receiving the technology, including issues such as the legal framework of that Party and the development of human capital.

ARTICLE 12.8

International agreements

1. Each Party shall comply with its commitments under the following international agreements:

(a) the TRIPS Agreement;

(b) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;

(c) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996; and

(d) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 28 June 2013.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

(a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012;

(b) the Trademark Law Treaty, adopted at Geneva on 27 October 1994 or the Singapore Treaty on the Law of Trademarks, adopted at Singapore on 27 March 2006; and

PUBLIC

(c) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall ensure that the procedures provided under the following international agreements are available in its territory:

(a) the Patent Cooperation Treaty, adopted at Washington on 19 June 1970, as amended on 28 September 1979, modified on 3 February 1984 and last modified on 3 October 2001; and

(b) the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as amended on 3 October 2006 and on 12 November 2007.

4. Each Party reaffirms its commitment to other international agreements under the auspices of WIPO to which it is a party, including the Berne Convention.

PUBLIC

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

PUBLIC

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 12.9

Authors

1. Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public, by sale or otherwise, of the original of their works or of copies thereof;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their works.

2. This Article is without prejudice to Article 12.46 on persons entitled to apply for the application of measures, procedures and remedies.

PUBLIC

ARTICLE 12.10

Performers

1. Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation[1] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

[1] The term "fixation" means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and

(f) the commercial rental to the public of the fixation of their performances.

2. This Article is without prejudice to Article 12.46 on persons entitled to apply for the application of measures, procedures and remedies.

ARTICLE 12.11

Producers of phonograms

1. Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their phonograms;

PUBLIC

(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

2. This Article is without prejudice to Article 12.46 on persons entitled to apply for the application of measures, procedures and remedies.

PUBLIC

ARTICLE 12.12

Broadcasting organisations

1. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air[1];

[1] Transmission "by wire or over the air" includes transmission by cable or satellite.

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts are transmitted by wire or over the air; and

(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

2. This Article is without prejudice to Article 12.46 on persons entitled to apply for the application of measures, procedures and remedies.

PUBLIC

ARTICLE 12.13

Right to remuneration for broadcasting and communication to the public

1. Each Party shall provide that the performers and producers of phonograms enjoy the right to a single equitable remuneration paid by the user to the performers and producers of phonograms if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or for any communication to the public.

2. Each Party shall provide that the single equitable remuneration referred to in paragraph 1 is claimed from the user by the performer or by the producer of a phonogram or by both. Each Party may enact laws and regulations that, in the absence of an agreement between performers and producers of phonograms, set the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

PUBLIC

ARTICLE 12.14

Term of protection

1. Each Party shall ensure that:

(a) the rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public;

(b) the term of protection of a musical composition with words expires 70 years after the death of the author of the lyrics or the composer of the musical composition, whoever lives longest, provided that either contribution was specifically made for the relevant musical composition with words;

(c) in the case of a work of joint authorship, the term of protection expires no less than 70 years after the death of the last surviving author;

(d) in the case of anonymous or pseudonymous works[1], the term of protection runs for at least 50 years after the work is lawfully made available to the public; however, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses the author's identity during the period referred to in the first sentence, the term of protection set out in point (a) shall apply;

[1] The term "anonymous or pseudonymous works" shall be understood within the meaning of the Berne Convention.

(e) where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each of those items separately;

(f) the term of protection of cinematographic or audiovisual works expires either:

(i) 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work; or

(ii) at least 50 years after the work has been made available to the public with the consent of the author, or, failing that, at least 50 years after that work was made;

(g) the rights of broadcasting organisations expire at least 20 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air;

(h) the rights of performers expire 50 years after the date of the fixation of the performance; however, if a fixation of the performance in a phonogram is lawfully published or, where provided for by a Party, lawfully communicated to the public within that period, the term of protection shall expire at least 50 years after the date of the first of such publication or, where provided for by a Party, the first of such communication to the public where a Party provides for both possibilities, the term of protection shall be calculated from whichever event occurs earlier and;

PUBLIC

(i) the rights of producers of phonograms expire 50 years after the fixation is made; however, if the phonogram has been lawfully published within this period, the said rights shall expire at least 50 years from the date of the first lawful publication; if no lawful publication has taken place within 50 years after the first fixation is made and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire at least 50 years from the date of the first lawful communication to the public.

2. The terms of protection laid down in this Article are calculated from the first day of January of the year following the event which gives rise to them.

3. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 12.15

Resale right

1. Each Party shall make all reasonable efforts to provide, for the benefit of the author of an original work of graphic or plastic art, a "resale right", to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of that work, subsequent to the first transfer of that work by the author.

PUBLIC

2. The resale right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. Each Party may provide that the resale right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and when the resale price does not exceed a certain minimum amount.

4. Each Party shall provide that authors who are nationals of a third country and their successors in title enjoy the resale right in accordance with this Agreement and the laws and regulations of each Party concerned only if the laws and regulations of the relevant third country permit the protection of resale rights in that third country for authors of the Party concerned and their successors in title.

ARTICLE 12.16

Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue for the use of such works or other protected subject matter.

PUBLIC

2. The Parties shall promote the transparency of collective management organisations, in particular as regards the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party shall encourage collective management organisations established in its territory and that represent another collective management organisation established in the territory of the other Party by way of a representation agreement, to accurately, regularly and diligently pay amounts owed to the represented collective management organisations, as well as to provide the represented collective management organisation with information on the amount of rights revenue collected on its behalf and any deductions made to that rights revenue.

PUBLIC

ARTICLE 12.17

Exceptions and limitations

1. Each Party shall provide for exceptions or limitations to the exclusive rights only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction, which are transient or incidental, and which are an integral and essential part of a technological process, the sole purpose of which is to enable a transmission in a network between third parties by an intermediary, or a lawful use, of a work or other subject matter to be made, and which have no independent economic significance, are exempted from the reproduction right.

PUBLIC

ARTICLE 12.18

Protection of technological measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures in accordance with its laws and regulations, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they are pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;

(b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. Paragraph 2 does not limit the power of the judicial authorities of a Party to evaluate all the circumstances of the case on a case-by-case basis according to the laws and regulations of that Party.

4. For the purposes of this Article, the term "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or related rights provided for in this Sub-Section. Technological measures are "effective" where the use of a protected work or other subject matter is controlled by the right holder through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the objective of protection.

PUBLIC

ARTICLE 12.19

Obligations concerning rights-management information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts, if that person knows, or has reasonable grounds to know, that by so doing that person is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights:

(a) the removal or alteration of any electronic rights-management information; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights-management information has been removed or altered without authorisation.

2. For the purposes of this Article, "rights-management information" means any information provided by right holders which identifies the work or other subject matter referred to in this Chapter, the author or any other right holder, information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information. The first sentence of this paragraph shall apply when any of those items of information is associated with a copy of, or appears in connection with, the communication to the public of a work or other subject matter referred to in this Chapter.

PUBLIC

SUB-SECTION 2

TRADEMARKS

PUBLIC

ARTICLE 12.20

Rights conferred by a trademark

1. A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

(a) any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered; and

(b) any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

2. The following, in particular, may be prohibited by the proprietor under paragraph 1:

(a) affixing the sign to the goods or to the packaging of those goods;

(b) offering the goods, placing them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign as a trade or company name or part of a trade or company name; and

(e) using the sign on business papers and in advertising.

PUBLIC

ARTICLE 12.21

Registration procedure

1. Each Party shall establish a system for the registration of trademarks in which each final refusal decision[1] to register a trademark, including a partial refusal of registration, issued by the relevant trademark administration, shall be notified in writing, duly reasoned and subject to challenge.

2. Each Party shall provide for the possibility to oppose applications to register a trademark or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.

[1] Final negative decision.

3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

PUBLIC

ARTICLE 12.22

Well-known trademarks

For the purposes of giving effect to protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 12.23

Exceptions to the rights conferred by a trademark

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including geographical indications, as appropriate and may provide for other limited exceptions, provided that such exceptions take into account the legitimate interests of the proprietor of the trademark and of third parties.

2. Each Party shall provide that the trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party, where the third party is a natural person;

(b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; or

(c) the trademark where it is necessary to indicate the intended purpose of a goods or services, in particular as accessories or spare parts.

3. Paragraph 2 shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters. Each Party may provide that the use under point (a) of paragraph 2 is only considered to be in accordance with honest practices in industrial or commercial matters if it relates to goods or services which are dissimilar to those of an earlier trademark.

PUBLIC

ARTICLE 12.24

Revocation and invalidation of a trademark

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of at least three years, the trademark has not been put to genuine use in the relevant territory of a Party in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. A Party may not claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the period of at least three years and filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of at least three years of non-use, shall, however, be disregarded where preparations for the commencement or resumption of use take place only after the holder has been informed that the application for revocation may be filed.

2. Each Party shall provide that a trademark shall also be liable to revocation if, after the date on which it was registered:

(a) as a consequence of acts or inactivity of the proprietor, the trademark has become the common name in the trade for a goods or services in respect of which it is registered; or

PUBLIC

(b) as a consequence of the use made of the trademark by the proprietor of the trademark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

3. The grounds for invalidation of a trademark may be determined by the laws and regulations of each Party.

PUBLIC

ARTICLE 12.25

Bad faith applications

Each Party shall provide that a trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

SUB-SECTION 3

DESIGNS

PUBLIC

ARTICLE 12.26

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new or original.[1] This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.

2. The holder of a registered design shall have the right at least to use it and to prevent third parties not having the holder's consent at least from using, making, offering for sale, selling, placing on the market, importing, exporting, stocking a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall be granted design protection:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

[1] The Parties agree that if the law of the Union so provides, individual character of designs may also be required.

(b) to the extent that those visible features of the component part fulfil in themselves the requirements pursuant to paragraph 1.

4. The term "normal use" in point (a) of paragraph 3 shall mean use by the end user, excluding maintenance, servicing or repair work.

PUBLIC

ARTICLE 12.27

Term of protection

Each Party shall provide that the duration of the protection available for registered designs shall amount to at least 10 years from the date of filing of the application. If a Party increases the duration of protection beyond 10 years, before or after the entry into force of this Agreement, the minimum duration of protection pursuant to the first sentence of this paragraph shall be set at that increased level of duration, which shall amount to at least 15 years.

ARTICLE 12.28

Exceptions and exclusions

1. Each Party may establish limited exceptions to the protection of designs, provided that those exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the holder of the protected design, taking into account the legitimate interests of third parties.

2. The protection of designs shall not extend to designs dictated essentially by technical or functional considerations. In particular, a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions for the product in which the design is incorporated or to which the design is applied to be mechanically connected to, or placed in, or around or in contact with another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design may subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

PUBLIC

ARTICLE 12.29

Relationship to copyright

Each Party shall ensure that a design is eligible for protection under its copyright law from the date on which the design was created or fixed in any form. Each Party shall determine the extent to which, and the conditions under which, such protection is conferred, including the level of originality required.

PUBLIC

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 12.30

Scope

1. This Sub-Section applies to the protection of geographical indications originating in the territories of the Parties.

2. Geographical indications of a Party, which are to be protected by the other Party, shall only be subject to this Sub-Section if covered by the scope of the laws and regulations referred to in Article 12.31.

PUBLIC

ARTICLE 12.31

Procedures

1. Having examined the laws and regulations of Indonesia listed in Section A of Annex 12-A (Requirements for Laws and Regulations on Geographical Indications), the Union concludes that these laws and regulations meet the elements laid down in Section B of Annex 12-A (Requirements for Laws and Regulations on Geographical Indications).

2. Having examined the laws and regulations of the Union listed in Section A of Annex 12-A (Requirements for Laws and Regulations on Geographical Indications), Indonesia concludes that these laws and regulations meet the elements laid down in Section B of Annex 12-A (Requirements for Laws and Regulations on Geographical Indications).

3. Following the completion of an opposition procedure in accordance with the criteria set out in Annex 12-B (Criteria to be Included in the Opposition Procedure) and an examination of the geographical indications of the Union listed in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)), which have been registered by the Union under the laws and regulations referred to in paragraph 2 of this Article as geographical indications complying with paragraph 1 of Article 22 of the TRIPS Agreement, Indonesia shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

4. Following the completion of an opposition procedure in accordance with the criteria set out in Annex 12-B (Criteria to be Included in the Opposition Procedure) and an examination of the geographical indications of Indonesia listed in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)), which have been registered by Indonesia under the laws and regulations referred to in paragraph 1 of this Article as geographical indications complying with paragraph 1 of Article 22 of the TRIPS Agreement, the Union shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

PUBLIC

ARTICLE 12.32

Amendment of the list of geographical indications

The Parties may amend the list of geographical indications to be protected in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)), in accordance with Articles 12.37 and 24.2. New geographical indications shall be added following the completion of the opposition procedure and their examination as referred to in Article 12.31(3) or (4), as the case may be.

ARTICLE 12.33

Protection of geographical indications

1. Each Party shall provide for the protection of the geographical indications listed in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) against:

(a) any direct or indirect commercial use of a protected name:

(i) for comparable products not compliant with the product specification of the protected name; or

(ii) in so far as such use exploits the reputation of a geographical indication;

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar, including when the product is used as an ingredient;

(c) any other false or misleading indication as to the origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including when the product is used as an ingredient; or

(d) any other practice liable to mislead the consumer as to the true origin of the product.

2. Geographical indications listed in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) shall not become generic in the territories of the Parties.

3. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be, protected in the territory of that other Party. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of the notifying Party. That notification shall take place in accordance with the procedures laid down in Article 12.37(5).

PUBLIC

4. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner to mislead the public.

PUBLIC

ARTICLE 12.34

Right of use of geographical indications

1. A geographical indication protected under this Agreement may be used by any operator marketing a product which conforms to the corresponding specification.

2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE 12.35

Relationship to trademarks

1. Each Party shall, where a geographical indication is protected under this Sub-Section, refuse to register a trademark the use of which would contravene Article 12.33(1), provided that an application to register the trademark is submitted after the applicable date of protection of the geographical indication in the territory of the Party concerned. Trademarks registered in breach of this paragraph shall be invalidated.

2. For geographical indications as referred to in Article 12.31, the applicable date of protection referred to in paragraph 1 of this Article shall be the date of entry into force of this Agreement.

3. For geographical indications as referred to in Article 12.32, the applicable date of protection referred to in paragraph 1 of this Article shall be the date of the transmission of a request to the other Party to protect a geographical indication.

PUBLIC

4. Each Party shall protect geographical indications where a prior trademark exists. A prior trademark shall mean a trademark the use of which contravenes Article 12.33(1) which has been applied for, registered or established by use, if that possibility is provided for by the laws and regulations concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement, which the proprietor of the prior trademark has the right to use the geographical indications in accordance with the respective laws and regulations of a Party. That trademark may continue to be used and renewed provided that no grounds for the trademark's invalidity or revocation exist in the laws and regulations on trademarks of the relevant Party. In those cases, the use of the protected geographical indication as well as the use of the relevant trademark shall be permitted.

ARTICLE 12.36

Enforcement

Each Party shall provide for the enforcement of the protection laid down in Articles 12.31 to 12.35 by appropriate administrative and judicial means to prevent or stop the unlawful use of protected designations of origin and protected geographical indications. Each Party shall also enforce this protection on request of an interested party.

PUBLIC

ARTICLE 12.37

Other provisions and specific functions of the Committee

1. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

2. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be protected even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually determine the practical conditions of use under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

3. If a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party that is protected under this Sub-Section, it shall inform the other Party thereof and give that Party an opportunity to comment before the third country's geographical indication becomes protected.

PUBLIC

4. Any matter arising from product specifications of protected geographical indications shall be dealt with in the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property in its specific configuration with regard to Chapter 12 (Intellectual Property) (hereinafter referred to as the "Committee" for the purposes of this Chapter) referred to in Article 12.61.

5. The protection of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates. A Party shall notify the other Party if a geographical indication listed in Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) ceases to be protected in its territory. Following such notification, Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) shall be amended pursuant to paragraph 8 of this Article.

6. A product specification referred to in this Sub-Section shall be approved, including any amendments also approved, by the authorities of the Party from which the product originates.

7. For the purposes of this Sub-Section, the Committee referred to in Article 12.61 shall also see to the proper functioning of this Sub-Section and may consider any matter related to its implementation and operation.

PUBLIC

8. For the purposes of this Sub-Section, the Committee referred to in Article 12.61 may recommend to the Trade Committee to amend, pursuant to Article 24.2:

(a) Annex 12-A (Requirements for Laws and Regulations on Geographical Indications) as regards the references to the laws and regulations applicable in the Parties and the elements for registration and control of geographical indications;

(b) Annex 12-B (Criteria to be Included in the Opposition Procedure) as regards the criteria to be included in the opposition procedure; and

(c) Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) as regards geographical indications.

9. The Committee shall be responsible for exchanging and notifying information on geographical indications for the purpose of considering their protection in accordance with Article 12.33.

PUBLIC

SUB-SECTION 5

PATENTS

ARTICLE 12.38

Patents

1. Subject to the provisions of paragraphs 2 and 3 of Article 27 of the TRIPS Agreement, each Party shall ensure at least adequate and effective patent protection for inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

2. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of Article 27 of the TRIPS Agreement, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

PUBLIC

ARTICLE 12.39

Period of effective protection under a patent on medicinal products or on plant protection products

The Parties recognise that medicinal products or plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation[1] procedure before being placed on their market. The Parties acknowledge that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective markets, as defined for that purpose by the relevant laws and regulations, may shorten the period of effective protection under the patent.

[1] The term "administrative authorisation" refers to the formal approval granted by regulatory authorities to allow the marketing of medicinal and plant protection products. This authorisation ensures that the product meets all necessary regulatory requirements, including safety and efficacy.

SUB-SECTION 6

PROTECTION OF TRADE SECRETS[1]

PUBLIC

ARTICLE 12.40

Scope of protection of trade secrets

1. In fulfilling its obligation under paragraph 1 of Article 2 of the TRIPS Agreement and in particular paragraphs 1 and 2 of Article 39 of the TRIPS Agreement, each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret without the consent of the holder, whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

[1] The terms "trade secret" and "undisclosed information" are interchangeable for the purposes of Articles 12.40 and 12.41.

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and

(b) "trade secret holder" means any natural or juridical person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following conducts shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in point (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret; and

PUBLIC

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought to have known, under the circumstances, that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b), including when a person induced another person to carry out the actions referred to in point (b).

4. Nothing in this Sub-Section shall be understood as requiring a Party to consider any of the following conducts as contrary to honest commercial practices:

(a) independent discovery or creation by a person of the relevant information;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use or disclosure of information required or allowed by the relevant law of each Party; or

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

PUBLIC

ARTICLE 12.41

Civil judicial procedures and remedies concerning trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article 12.40(1) or who has access to documents which form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of that participation or access.

2. In the civil judicial proceedings referred to in Article 12.40(1), each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures, as set out in the laws and regulations of the Party, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(c) order the person that knew or ought to have known that the person was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of that acquisition, use or disclosure of the trade secret;

PUBLIC

(d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices; and

(e) impose sanctions on parties to the proceedings, or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of a trade secret or alleged trade secret used or referred to in those proceedings.

3. A Party shall not be required to provide for the judicial procedures and remedies referred to in Article 12.40(1) if the conduct contrary to honest commercial practices is carried out, in accordance with the law of that Party, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by the law of that Party.

ARTICLE 12.42

Protection of data submitted to obtain an authorisation to put a medicinal product on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal products on the market (hereinafter referred to as "marketing authorisation") against disclosure to third parties, except where it is necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

PUBLIC

2. Each Party shall provide that, for a limited period of time to be determined by its law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application to that authority for the first marketing authorisation without the explicit consent of the holder of the first marketing authorisation, unless international agreements applied by both Parties provide otherwise.

PUBLIC

ARTICLE 12.43

Protection of data submitted to obtain a marketing authorisation for a plant protection product

1. Each Party shall provide that for at least 10 years from the date of the first marketing authorisation to place a plant protection product on the market, the test or study reports submitted to obtain that first marketing authorisation are not used for the benefit of any other person who seeks to obtain a marketing authorisation for a plant protection product, without the explicit consent of the owner of the test or study reports, regardless of whether or not the test or study report has been made available to the public.

2. The test or study reports protected under paragraph 1 should fulfil the following conditions:

(a) be necessary for the marketing authorisation or for an amendment of a marketing authorisation in order to allow the use of the plant protection product on other crops; and

(b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.

PUBLIC

SUB-SECTION 7

PLANT VARIETIES

ARTICLE 12.44

Protection of plant variety rights

Each Party shall protect plant variety rights consistent with the International Convention for the Protection of New Varieties of Plants, adopted at Paris on 2 December 1961, as revised in Geneva on 19 March 1991 (hereinafter referred to as the "1991 UPOV Convention"), including the exceptions to the breeder's right as referred to in Article 15(2) of that Convention.[1]

[1] For greater certainty, this provision shall not affect the registration of local plant varieties under the laws and regulations of Indonesia outside the scope of the 1991 UPOV Convention.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

PUBLIC

ARTICLE 12.45

General provisions

1. The Parties affirm their commitments under the TRIPS Agreement and in particular of Part III thereof. The complementary measures, procedures and remedies under this Section are necessary to ensure the enforcement of intellectual property rights[1]. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall also be effective, proportionate and dissuasive, and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. This Section is without prejudice to the enforcement mechanisms, if any, for genetic resources, traditional knowledge and traditional cultural expression provided by the respective laws of the Parties.

[1] For the purposes of this Section the notion of "intellectual property rights" should include at least the following rights: copyright, rights related to copyright, rights of the creator of the topographies of a semiconductor product, trademark rights, design rights, patent rights, geographical indications, utility model rights, plant variety rights and trade names in so far as they are protected by each Party.

4. Each Party shall endeavour to enhance the fight against counterfeiting and piracy.

PUBLIC

ARTICLE 12.46

Persons entitled to apply for the application
of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) the holders of intellectual property rights in accordance with the law of the Party;

(b) all other persons authorised to use those intellectual property rights, in particular licensees, in so far as permitted by, and in accordance with, the law of the Party;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the law of the Party; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the law of the Party.

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

PUBLIC

ARTICLE 12.47

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party which has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Measures referred to in paragraph 1 may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of those goods and the documents relating thereto.

3. Each Party shall take the measures necessary, in cases of infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

PUBLIC

ARTICLE 12.48

Right of information

1. Each Party shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person that is party to the proceedings or a witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1, "any other person" means a person that was:

(a) found in possession of the infringing goods on a commercial scale;

(b) found to be using the infringing services on a commercial scale;

(c) found to be providing on a commercial scale services used in infringing activities; or

(d) indicated by the person referred to in points (a), (b) or (c) as being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. This Article is without prejudice to the law of a Party which:

(a) grants the right holder rights to receive fuller information;

(b) governs the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) governs responsibility for misuse of the right of information;

PUBLIC

(d) affords an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right; or

(e) governs the protection of confidentiality of information sources or the processing of personal data.

PUBLIC

ARTICLE 12.49

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, on request of the applicant, issue against the alleged infringer a provisional measure intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. A provisional measure may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right. For the purposes of this Article, "intermediary" includes internet service providers.

2. Each Party shall ensure that its judicial authorities may also, on request of the applicant, issue a provisional measure to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer. To that end, the judicial authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

ARTICLE 12.50

Remedies

1. Each Party shall ensure that its judicial authorities may order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction, or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. If appropriate, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

PUBLIC

2. The judicial authorities of each Party shall have the authority to order that the measures referred to in paragraph 1 be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.

PUBLIC

ARTICLE 12.51

Injunctions

Each Party shall ensure that, when a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities may issue against the infringer, as well as against an intermediary whose services are being used by a third party to infringe an intellectual property right, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 12.52

Alternative measures

Each Party may provide that its judicial authorities, in appropriate cases and on request of the person liable to be subject to the measures provided for in Articles 12.50 or 12.51, may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Articles 12.50 or 12.51, if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

PUBLIC

ARTICLE 12.53

Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by the right holder as a result of the infringement. When the judicial authorities set the damages:

(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or

(b) they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that its judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages, which may be pre-established.

PUBLIC

ARTICLE 12.54

Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 12.55

Publication of judicial decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, its judicial authorities may order, on request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

PUBLIC

ARTICLE 12.56

Presumption of authorship or ownership

Each Party shall recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Section:

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to appear on the work in the usual manner; and

(b) point (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 12.57

Administrative procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall ensure that such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this Section.

PUBLIC

ARTICLE 12.58

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned including in the following ways:

(a) each Party shall endeavour to consensually convene stakeholders in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights with the aim of reducing infringements;

(b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringements.

PUBLIC

SECTION D

BORDER ENFORCEMENT

ARTICLE 12.59

Border enforcement measures related to intellectual property rights

1. In implementing border measures for the enforcement of intellectual property rights by customs authorities, whether or not covered by this Agreement, each Party shall ensure consistency with its obligations under GATT 1994 and the TRIPS Agreements.

2. With respect to goods under customs control, each Party shall adopt or maintain procedures to enable a right holder, who suspects that goods infringe trademarks, copyright and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights, to lodge an application in writing to the competent authorities for the suspension, by the customs authorities based on the information received, of the release into free circulation or the detention of such goods. The competent authorities shall take action on such application, provided the requirement in the respective laws are met. For the purposes of this Section, unless otherwise specified, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities of the Party.

3. Each Party shall have in place electronic systems for the management of the applications for recordation by customs.

4. Each Party shall provide that its customs authorities decide about granting or recording application within a reasonable period of time from the submission of the application.

5. Each Party shall provide for such applications to apply to multiple shipments.

6. Paragraphs 3, 4 and 5 are without prejudice to any future technological developments for the improvement of the relevant systems and procedures.

7. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or to detain goods suspected of infringing an intellectual property right under the law of that Party.

PUBLIC

8. Each Party shall ensure that its customs authorities shall use risk analysis to identify suspected goods.

9. Each Party may have in place procedures allowing for the destruction of goods infringing intellectual property rights, in accordance with the law of that Party, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, if the persons concerned agree or do not oppose to the destruction. If goods determined to be infringing are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in such a manner as to avoid any harm to the right holder.

10. There shall be no obligation to apply this Article to the importation of goods placed on the market of the other Party or of a third country by, or with the consent of, the right holders.

11. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments. Each Party may have in place procedures allowing for the swift destruction of counterfeit trademarks and pirated goods sent in postal or express couriers' consignments.

12. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in paragraph 2.

PUBLIC

13. The Parties shall cooperate in respect of international trade in suspected goods and, in particular, share information on such trade.

14. Without prejudice to other forms of cooperation, the Protocol on Mutual Administrative Assistance in Customs Matters applies with regard to breaches of legislation on the intellectual property rights referred to in paragraph 2, for the enforcement of which the customs authorities are competent in accordance with this Article.

15. The Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation) and 12 (Intellectual Property) for issues related to border enforcement established pursuant to Article 24.4, shall be responsible for ensuring the proper functioning and implementation of this Article, in particular providing for the framework for organising cooperation.

PUBLIC

SECTION F

FINAL PROVISIONS

PUBLIC

ARTICLE 12.60

Cooperation and transparency

1. The Parties shall cooperate with a view to supporting the implementation of the commitments and obligations under this Chapter.

2. The areas of cooperation include, but are not limited to, the following activities:

(a) exchange of information on the legal framework concerning intellectual property rights and the relevant rules of protection and enforcement;

(b) exchange of experience between the Parties on legislative progress concerning intellectual property rights;

(c) exchange of experience between the Parties on the enforcement of intellectual property rights;

(d) exchange of experience between the Parties on enforcement of intellectual property rights at central and sub-central level by customs authorities, police, administrative and judicial bodies;

(e) coordination to prevent exports of counterfeit goods, including coordination with other countries;

(f) technical assistance, capacity building, exchange and training of personnel;

(g) exchange of information and experience on intellectual property related aspects of genetic resources, traditional knowledge and traditional cultural expressions;

(h) exchange of information and experience on the period of effective protection under a patent on medicinal products or on plant protection products;

(i) protection and defence of intellectual property rights and the dissemination of information in this regard in, amongst others, business circles and civil society;

(j) raising public awareness of consumers and right holders;

(k) enhancement of institutional cooperation, particularly between the Parties' intellectual property offices;

(l) active promotion of awareness and education of the general public on policies concerning intellectual property rights;

PUBLIC

(m) promotion of public-private collaboration involving SMEs, including through SME-focused events or gatherings, concerning the protection and enforcement of intellectual property rights and the reduction of infringements; and

(n) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant CEPA contact points established pursuant to Article 24.6 for control or management of geographical indications of the other Party protected pursuant to Sub-Section 4.

4. The Parties shall, either directly or through the Committee referred to in Article 12.61, maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE 12.61

Committee on Services, Investment, Digital Trade,
Government Procurement, and Intellectual Property

1. This Article complements and further specifies Article 24.4.

PUBLIC

2. The Committee established by Article 24.4 shall consider any matter relating to the effective implementation and operation of this Chapter and shall have the following specific functions:

(a) exchange information and experiences on issues related to intellectual property, including in the area of geographical indications, including legislative and policy developments, and any other matter of mutual interest related to the implementation and operation of this Chapter; and

(b) perform specific tasks attributed to it in this Chapter, including in Article 12.37.

PUBLIC

CHAPTER 13

COMPETITION

PUBLIC

SECTION A

ANTITRUST AND MERGERS

ARTICLE 13.1

Principles

The Parties recognise the importance of undistorted competition in their trade and investment relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and undermine the benefits of this Agreement.

ARTICLE 13.2

Legislative framework

1. The Parties shall maintain a competition law which applies to all sectors of the economy[1] and addresses all of the following practices:

(a) horizontal and vertical agreements between enterprises, and concerted practices which have as their object or effect the prevention, restriction or distortion of competition[2];

(b) abuses by one or more enterprises of a dominant position; and

(c) mergers and acquisitions between enterprises which significantly impede effective competition.

2. All enterprises, including private and public enterprises, shall be subject to the competition law referred to in this Article insofar as the application of the competition law does not obstruct the performance, in law or in fact, of particular tasks of public interest that may be assigned to the enterprises in question. Any limitations to the application of the competition law of a Party shall be confined to tasks of public interest and not go beyond what is strictly necessary to achieve the task of public interest and be transparent.

[1] For greater certainty, competition rules in the Union apply to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, and its subsequent replacements, if any.

[2] For the Union, these agreements and practices include also decisions by associations of enterprises.

ARTICLE 13.3

Implementation

1. Each Party shall maintain and develop an operationally independent authority that is responsible for, and appropriately equipped with, the powers and resources necessary to ensure the full application and the effective enforcement of the competition law referred to in Article 13.2.

2. Each Party shall apply its competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the enterprises concerned, irrespective of their nationality or ownership status.

ARTICLE 13.4

Cooperation

1. In order to fulfil the objectives of this Agreement and to enhance the effectiveness of competition law enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases in a manner that is compatible with their respective laws and regulations, important interests and available resources.

PUBLIC

2. For the purposes of paragraph 1, the competition authorities of the Parties shall endeavour to consult and exchange non-confidential information in the implementation of competition law, policy, and practice. Where possible and appropriate, the competition authorities of the Parties may coordinate their enforcement activities relating to the same or related cases.

3. Nothing in this Article shall limit the discretion of the Parties' competition authorities to take action in respect of particular cases, and to decide whether to take action on particular requests by the other Party's competition authority.

PUBLIC

ARTICLE 13.5

Confidentiality

1. When exchanging information under this Section, the Parties shall take into account the limitations imposed by their respective law concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. When a Party communicates information under this Section, the receiving Party shall maintain the confidentiality of the communicated information.

ARTICLE 13.6

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Section.

PUBLIC

SECTION B

SUBSIDIES

ARTICLE 13.7

Principles

The Parties affirm that subsidies can be granted by a Party when they are necessary to achieve a public policy objective. The Parties recognise, however, that in certain circumstances certain subsidies may have the potential to distort the proper functioning of markets and undermine the benefits of trade between the Parties. In principle, therefore, the Parties shall endeavour not to grant subsidies to enterprises when they are likely to distort[1] markets.

[1] For greater certainty, the term "distort" under this Chapter is distinct from that prescribed under the Parties' national regulations on anti-dumping and countervailing measures. This Article does not preclude the Parties from initiating a subsequent anti-dumping or countervailing duties investigation of the same product, in which case the Parties shall refrain from using the distorted conditions found under this Chapter as a legal basis for such investigation.

ARTICLE 13.8

Definition and scope

1. For the purposes of this Section, a subsidy is a measure which fulfils the conditions set out in Articles 1 and 2 of the SCM Agreement.

2. This Section applies to subsidies granted to enterprises supplying goods. This Section also applies to subsidies granted to enterprises supplying services to the extent provided in Articles 13.10 and 13.11.

3. Subsidies granted to all enterprises, including public and private enterprises, are subject to this Section in so far as its application does not obstruct the performance, in law or in fact, of particular tasks of public interest assigned to these enterprises. A deviating application of the rules in this Chapter should be limited to tasks of public interests that have been assigned in a transparent manner.

4. Article 13.11 does not apply to the audio-visual sector.

5. Article 13.11 does not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture and by the WTO Agreement on Fisheries Subsidies[1].

[1] Once the WTO Agreement on Fisheries Subsidies has entered into force for both Parties and the Committee on Fisheries Subsidies is established, consultations under Article 13.11 do not apply to subsidies within the scope of the WTO Agreement on Fisheries Subsidies.

6. This Section does not apply to:

(a) subsidies granted to compensate the damage caused by natural or man-made disasters, national or global economic emergencies or crises, and non-economic activities;

(b) specific subsidies the amount of which per beneficiary over a period of three years is below 350 000 Special Drawing Rights; or

(c) subsidies granted at the sub-central level of government in Indonesia to enterprises supplying services.

7. Notwithstanding point (c) of paragraph 6, if the Union considers that it is adversely affected by a subsidy granted at the sub-central level of government in Indonesia to enterprises supplying services, the Union may request a dialogue with Indonesia on such matters. Indonesia shall endeavour to accord sympathetic consideration to such a request.

ARTICLE 13.9

Relationship with the WTO

1. Nothing in this Section shall affect the rights and obligations of either Party under applicable WTO Agreements.

PUBLIC

2. The Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Section after consultations between the Parties.

PUBLIC

ARTICLE 13.10

Transparency

1. Each Party shall make transparent the following with respect to any subsidy granted or maintained within its territory with regard to enterprises producing goods:

(a) the legal basis of the subsidy;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

2. A Party shall be considered to have met the requirements of paragraph 1 if the subsidy concerned is notified under the applicable WTO Agreements or if the information required under paragraph 1 is made available by the Party or on its behalf on a publicly accessible website by 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained.

3. At the request of the other Party, a Party shall endeavour to provide available information on any subsidy granted or maintained to enterprises supplying services within its territory, including:

(a) the legal basis of the subsidy;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

PUBLIC

ARTICLE 13.11

Consultations

1. Notwithstanding the transparency requirements set out in Article 13.10(1), a Party (hereinafter referred to as "requesting Party" for the purposes of this Article) may request information additional to that pursuant to Article 13.10(1) from the other Party (hereinafter referred to as "responding Party" for the purposes of this Article) about a subsidy granted by the responding Party. The requesting Party shall explain in its request the reasons for requesting the additional information. The request may concern information which is sufficiently specific to enable a Party to evaluate the trade effects of the subsidy and to understand its operation as foreseen by Article 25 of the SCM Agreement.

2. The responding Party shall provide the information requested pursuant to paragraph 1 to the requesting Party in writing no later than 105 days after the date of notification of the request. If the responding Party does not provide, wholly or partially, the information requested by the requesting Party, the responding Party shall explain the reasons for not providing such information in its written response as required by this paragraph.

3. If, at any time after making a request for additional information pursuant to paragraph 1, the requesting Party considers that a subsidy granted by the responding Party with regard to enterprises producing goods is likely to impact its trade and investment interests, it may express its concerns in writing to the responding Party together with an appropriate explanation, and request consultations on the matter.

4. Consultations between the Parties to discuss the concerns raised shall be held within 75 days after the date of delivery of the request for consultations unless the Parties agree otherwise.

5. The Parties shall attempt to the greatest extent possible, to arrive at a mutually satisfactory resolution of the matter.

6. If, at any time, a Party considers that a subsidy granted by the responding Party with regard to enterprises supplying services is likely to impact its interests, it may express its concerns in writing to the responding Party together with an appropriate explanation and request consultations on the matter with a view to arriving at an amicable and mutually satisfactory resolution of the matter.

PUBLIC

7. Any information exclusively obtained or exchanged during consultations and the resolution reached between the Parties as a result of consultations under this Article shall be without prejudice to the rights of the Parties in any further proceedings, and shall only be used in the framework of this Agreement.

PUBLIC

ARTICLE 13.12

Use of subsidies

Each Party shall ensure that enterprises use the subsidies provided by it only for the policy objective or purpose for which the subsidies have been granted.[1]

ARTICLE 13.13

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Section.

[1] For greater certainty, each Party may have its own means of ensuring that the subsidies are used only for such objective or purpose. Where a Party has set up the relevant legislative framework and administrative procedures to this effect, the obligation is considered to be fulfilled.

SECTION C

STATE-OWNED ENTERPRISES

PUBLIC

ARTICLE 13.14

Definitions

For the purposes of this Section, the following definitions shall apply:

(a) "state-owned enterprise" means an enterprise including any subsidiary, in which a Party:

(i) directly owns more than 50 % of the enterprise's subscribed capital;

(ii) controls, directly or indirectly more than 50 % of the voting rights;

(iii) holds the power to appoint more than half of the members of the enterprise's board of directors or any other equivalent management body; or

(iv) holds the power to control[1] the strategic decisions of the enterprise;

[1] For the establishment of control, all relevant legal and factual elements shall be taken into account on a case-by-case basis.

(b) "commercial activities" means activities undertaken by an enterprise, the end result of which is the production of a good or the supply of a service to be sold in the relevant market in quantities and at prices determined by the enterprise, and which are undertaken with an orientation towards profit-making[1];

(c) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately-owned enterprise operating according to market economy principles in the relevant business or industry;

(d) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS and, where applicable, in its Annex on Financial Services;

(e) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the OECD or a successor undertaking, whether developed within or outside of the OECD framework that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979.

[1] For greater certainty, this excludes activities by an enterprise which are undertaken on a non-profit basis or a cost recovery basis.

PUBLIC

ARTICLE 13.15

Scope

1. The Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as paragraphs 1, 2 and 5 of Article VIII of GATS.

2. This Section applies to state-owned enterprises engaged in a commercial activity that may potentially affect trade and investment between the Parties. Where state-owned enterprises engage both in commercial and non-commercial activities, only their commercial activities are covered by this Section.

3. Article 13.17 does not apply to those activities of state-owned enterprises of a Party for which a Party has taken measures on a temporary basis in response to a national or global economic emergency or in response to a natural disaster, calamity or food scarcity.

4. This Section does not apply to those activities of state-owned enterprises of a Party which are related to national defense and security.

5. This Section applies to state-owned enterprises at the central level of government in accordance with Annex 13-A (Specific Rules for Indonesia on State-Owned Enterprises).

PUBLIC

6. This Section does not apply to situations where state-owned enterprises act as procuring entities conducting procurement for governmental purposes and not with a view to commercial resale or with a view to use in the production of a good or in the supply of a service for commercial sale[1].

7. This Section does not apply to any service supplied in the exercise of governmental authority.

8. This Section does not apply to state-owned enterprises whose annual revenue derived from commercial activities in one of the three previous consecutive fiscal years was less than 200 million Special Drawing Rights.

9. Article 13.17 does not apply to the services sectors which are outside the scope of Chapter 8 (Liberalisation of Investment and Trade in Services).

10. Article 13.17 does not apply to the extent that a state-owned enterprise of a Party makes purchases or sales of goods or services in sectors which fall outside the scope of commitments of that Party pursuant to Article 8.10.

11. This Section applies to Indonesia subject to Annex 13-A (Specific Rules of Indonesia on State-owned Enterprises).

[1] This is without prejudice to the commitments made by the Parties in Chapter 11 (Government Procurement), including, in particular, in Annex 11-A (Government Procurement Market Access Schedule of the Union) and 11-B (Government Procurement Market Access Schedule of Indonesia).

12. Article 13.17 does not apply to the supply of financial services by a state-owned enterprise pursuant to a public service mandate, if that supply of financial services:

(a) supports exports or imports, provided that those financial services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that those financial services are:

(i) not intended to displace commercial financing;

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement defined in point (e) of Article 13.14, provided that it falls within the scope of that Arrangement.

13. This Section shall start applying three years after the entry into force of this Agreement.

PUBLIC

ARTICLE 13.16

General provisions

1. Without prejudice to each Party's rights and obligations under this Section, nothing in this Section prevents a Party from establishing or maintaining state-owned enterprises.

2. A Party shall not require or encourage a state-owned enterprise to act in a manner inconsistent with this Section.

PUBLIC

ARTICLE 13.17

Non-discriminatory treatment and commercial considerations

1. Each Party shall ensure that its state-owned enterprises, when engaging in commercial activities, act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil any public service mandate that is not inconsistent with paragraph 2.

2. Each Party shall ensure that its state-owned enterprises, when engaging in commercial activities:

(a) in its purchase of a good or a service:

(i) accords to a good or a service supplied by an enterprise of the other Party treatment no less favourable than that which it accords to a like good or a like service supplied by its own enterprises; and

(ii) accords to a good or a service supplied by enterprises that are investments of investors of the other Party treatment no less favourable than that which it accords to a like good or a like service supplied by enterprises that are investments of its own investors in the relevant market in the Party; and

(b) in its sale of a good or a service:

(i) accords to an enterprise of the other Party treatment no less favourable than that which it accords to its own enterprises; and

(ii) accords to enterprises that are investments of investors of the other Party treatment no less favourable than that which it accords to enterprises that are investments of its own investors in the relevant market in the Party.

PUBLIC

3. Paragraphs 1 and 2 shall not preclude state-owned enterprises, from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price, provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations; or

(b) refusing to purchase or supply goods or services, provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations.

PUBLIC

ARTICLE 13.18

Regulatory framework

1. Each Party shall endeavour to make best use of relevant international best practices in governing state-owned enterprises including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any body exercising a regulatory function which that Party establishes or maintains:

(a) is independent from, and not accountable to, any of the enterprises that it regulates; and

(b) acts impartially[1] in like circumstances with respect to all enterprises regulated by that body, including state-owned enterprises.[2]

3. Each Party shall ensure the enforcement of laws and regulations to state-owned enterprises in a consistent and non-discriminatory manner.

PUBLIC

ARTICLE 13.19

Exchange of information

1. A Party which has reason to believe that its interests under this Section are being adversely affected by the commercial activities of a state-owned enterprise of the other Party, and subject to the scope of this Section as defined in Article 13.15, may request the other Party in writing to supply information about the commercial activities of that state-owned enterprise related to the application of the provisions of this Section.

[1] For greater certainty, the impartiality of the regulatory body is to be assessed by reference to a general pattern or practice of that regulatory body.

[2] For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body in other Chapters, the relevant provision in the other Chapters shall prevail.

2. The requested Party shall provide the following information, provided that the request includes an explanation of how the activities of a state-owned enterprise may be affecting the interests of the requesting Party under this Section and indicates which of the following information shall be provided:[1]

(a) the ownership and the voting structure of the state-owned enterprise, indicating the percentage of shares and the percentage of voting rights that the requested Party and any of its state-owned enterprises cumulatively own, and the percentage of voting rights that they cumulatively hold in the state-owned enterprise;

(b) a description of any special shares or special voting or other rights that the requested Party, or any of its state-owned enterprises hold, where such rights differ from the rights attached to the general common shares of such state-owned enterprise;

(c) a description of the organisational structure of the state-owned enterprise, the composition of its board of directors or equivalent management body and cross-holdings and other links with other state-owned enterprises;

(d) information regarding which government departments or public bodies regulate or monitor the state-owned enterprise, a description of the reporting requirements imposed on it by those departments or public bodies, and the rights and practices of the government departments or any public bodies in the appointment, dismissal or remuneration of its leading officials, members of its board of directors, commissioners or any other equivalent management body;

[1] For greater certainty, in the event that the specified information has been published, the obligation of a Party is considered to be fulfilled.

(e) the annual revenue for the most recent three-year period of the state-owned enterprise;

(f) any exemptions, immunities and related measures from which a state-owned enterprise benefits under the laws and regulations of the requested Party;

(g) any additional information regarding the state-owned enterprise that is publicly available, including annual financial reports and third party audits.

3. If the requested information is not available to the requested Party, that Party shall provide the reasons for this in writing to the other Party who requested the information.

PUBLIC

ARTICLE 13.20

Technical consultation

1. Before initiating dispute settlement proceedings pursuant to Chapter 22 (Dispute Settlement), the Parties shall seek to resolve any concerns arising from the implementation of this Section through technical consultations pursuant to this Article. Those technical consultations shall be conducted with a view to achieving a mutually satisfactory resolution of the Parties' concerns[1].

2. For the purposes of paragraph 1, a Party may make a request to the other Party to hold technical consultations.

[1] For greater certainty, technical consultations pursuant to this Article shall not replace consultations under Article 22.4, unless the Parties agree otherwise.

3. The request shall be made in writing[1] and identify:

(a) the matter or measure at issue;

(b) the provisions of this Section to which the concerns are related; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measures or matters.

4. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or by any technological means available to the Parties. If the meeting is held in person, it shall be held in the capital of the requested Party, unless the Parties agree otherwise.

5. The Parties shall endeavour to resolve the concerns as expeditiously as possible within 60 days after the date of receipt of the request. If the requesting Party believes that the matter is urgent and requires immediate settlement, it may request a shorter time frame. In such cases, the requested Party shall give positive consideration to such request.

6. A Party may request or exchange further information relevant to paragraph 2, and the information obtained or communications between the Parties under this Article shall be confidential unless the Parties agree otherwise.

[1] For greater certainty, nothing in this Article limits the mode of delivery of such a request in writing. In the case the request is sent by electronic means, the requested Party shall promptly confirm the receipt of such a request and no later than 14 days after receipt.

PUBLIC

7. Any resolution reached between the Parties as a result of technical consultations under this Article shall be notified to the Trade Committee and shall be without prejudice to the rights of the Parties in any further proceedings. That resolution shall only be used within the framework of this Agreement.

PUBLIC

CHAPTER 14

ENERGY AND RAW MATERIALS

ARTICLE 14.1

Principles

1. Each Party retains the sovereign right to determine whether an area within its territory is available for exploration and production of energy goods and raw materials, including in its archipelagic and territorial waters, continental shelf and its exclusive economic zone, determined in accordance with UNCLOS.

2. Consistent with the provisions of this Chapter, each Party preserves the right to adopt, maintain, and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods and raw materials, protecting society, the environment, public health and consumers and promoting public security and safety.

PUBLIC

ARTICLE 14.2

Objectives

The objectives of this Chapter are:

(a) to facilitate and increase existing and future trade and investment and enhance cooperation between the Parties in the areas of energy and raw materials, including renewable energy and energy efficiency, with a view to favouring the energy transition, thereby contributing to the achievement of the Parties' respective net-zero greenhouse gas emissions goals, including through the use of green technologies; and

(b) to improve environmental sustainability in the areas of energy and raw materials.

ARTICLE 14.3

Definitions

PUBLIC

For the purposes of this Chapter, unless otherwise provided:

(a) "authorisation" means a permission, license, concession or similar administrative or contractual instrument by which the competent authority of a Party allows an entity to exercise a certain economic activity in its territory;

(b) "balancing" means all actions and processes, on all timelines, through which network operators[1] ensure, in a continuous way, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(c) "biofuels" means liquid fuel produced from biomass consisting, among others, of vegetable oils including palm oil, rapeseed oil or soybean oil;

(d) "energy goods" means, for the purposes of this Agreement, goods listed in Annex 14-A (List of Energy Goods);

(e) "entity" means any natural person or enterprise or group thereof;

[1] For greater certainty, for Indonesia this includes also electricity suppliers, based on Indonesian law.

(f) "non-household customer" means an entity that uses, processes or trades any of the raw materials for the purposes of performing an economic activity.

(g) "raw materials" means, for the purposes of this Agreement, substances used in the manufacture of industrial products as listed in Annex 14-B (List of Raw Materials), excluding processed fishery products and agricultural goods[1];

(h) "renewable energy" means energy, including electric energy, produced from renewable sources in a sustainable manner, such as wind, solar, geothermal, hydrothermal, ocean, osmotic and ambient energy, hydropower, biomass, biofuels, landfill gas, sewage treatment plant gas or biogases[2];

(i) "renewable fuels" means biofuels, bioliquids, biomass fuels and renewable fuels of non-biological origin; and

(j) "renewable fuels of non-biological origin" means liquid and gaseous fuels, including hydrogen and its derivatives, the energy content of which is derived from renewable sources other than biomass.

PUBLIC

[1] For the purposes of this Chapter, "agricultural goods" means products listed in Annex 1 to the Agreement on Agriculture.

[2] This definition is without prejudice to sustainability requirements that each Party may introduce in its law in order to recognise energy as renewable, provided that such requirements are consistent with this Agreement and with international trade rules by which the Parties are bound, in particular in relation to the principle of non-discrimination.

ARTICLE 14.4

Authorisation for exploration or production of energy goods and raw materials

1. If a Party requires an authorisation to explore or produce energy goods or raw materials in its territory, that Party shall ensure that the requirements and procedures for granting such authorisation, including the identification of the relevant geographical area, or part thereof, and the proposed date or time limit for requesting or granting the authorisation:

(a) are established in advance;

(b) are made publicly available in a manner that enables interested entities to apply; and

(c) do not discriminate between entities of the Parties.

2. A Party may require an entity which has been granted an authorisation to produce upstream hydrocarbons to pay a financial contribution or a contribution in kind. That contribution shall not discriminate between entities of the Parties and shall be determined in such a manner so as not to interfere with the management and the decision-making process of the entity which has been granted the authorisation.

3. A Party shall ensure that an entity of the other Party which has tried but failed to obtain an authorisation is provided with the reasons for the rejection of its application.

PUBLIC

4. Each Party shall ensure that an entity of the other Party which has tried but failed to obtain an authorisation is entitled, when the entity deems necessary, to have recourse to procedures for appeal or review. Procedures for appeal or review shall be made public in advance.

5. In the case of Indonesia, paragraphs 3 and 4 shall not apply to hydrocarbons.

PUBLIC

ARTICLE 14.5

Access to energy transport infrastructure

1. Each Party shall ensure that owners or operators of electricity and gas transmission and distribution networks[1] in its territory grant non-discriminatory access to such infrastructure to entities of the other Party under conditions not less favourable than those applicable to entities of that Party that are authorised to produce gas or electricity.

2. Unless access to the infrastructure referred to in paragraph 1 follows automatically from an authorisation to produce gas or electricity for own use[2], it shall be granted within a reasonable time after the date of the request for such access. Each Party must ensure that the terms of access and use are objective, transparent, non-arbitrary and do not discriminate between users of such infrastructure. Each Party retains the right to set the conditions for the right to produce gas and electricity for own use.

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[1] For greater certainty, liquefied natural gas terminals are part of the gas transport infrastructure as provided in the Parties' law and are subject to this Article in the same way as "transmission and distribution networks".

[2] For Indonesia, access to electricity networks refers to electricity for own production and use, either remotely or on-site, as well as all other instances as provided for in its law.

3. Each Party shall maintain a regulatory body or bodies entrusted to impartially address or settle disputes regarding appropriate terms, conditions and tariffs for access and use of electricity and gas transmission and distribution networks within a reasonable time. Each Party shall ensure that entities of the other Party that are adversely affected by a determination or decision of such a regulatory body have the right of recourse to an independent appeal body, which may be a judicial authority.

PUBLIC

ARTICLE 14.6

Electricity generated from renewable energy sources

1. The Parties recognise the important contribution renewable energy can make in reducing greenhouse gas emissions to mitigate climate change.

2. In view of paragraph 1, each Party shall seek to facilitate:

(a) investment in renewable energy generation; and

(b) the integration of renewable energy generation into electricity systems.

3. With regard to access and use of electricity transport infrastructure[1], each Party shall ensure, with respect to renewable electricity suppliers of the other Party, that its network owners and operators[2]:

(a) enable a physical connection to be established between new renewable electricity generation facilities and the electricity network;

(b) enable the reliable use of the electricity network to supply electricity generated by renewable electricity suppliers of the other Party;

(c) provide or enable provision of balancing services; and

(d) take appropriate grid and market-related operational measures in order to minimise the curtailment of electricity produced from renewable energy sources.

4. Notwithstanding paragraph 3, each Party may adopt or maintain measures that are necessary to fulfil a legitimate public policy objective, such as the need to maintain the stability of the electricity system, provided that such measures are based on objective and non-discriminatory criteria.

PUBLIC

1 For greater certainty, for Indonesia, this refers to instances of access to energy grids as provided for in Indonesian law.

2 For greater certainty, for Indonesia, the term "network owners and operators" may include electricity suppliers if they hold responsibility for the transmission system operation under Indonesian law.

ARTICLE 14.7

Cooperation on energy and raw materials

In accordance with the provisions of Chapter 17 (Economic Cooperation and Capacity Building), the Parties shall cooperate in the area of energy and raw materials in order to, *inter alia*:[1]

(a) reduce or eliminate trade and investment distorting measures in third countries affecting energy and raw materials while fully preserving the Parties' sovereign rights over natural resources, in accordance with Article 14.1;

(b) without prejudice to their respective public policy preferences, coordinate, as appropriate, their positions in international fora where trade and investment issues related to energy and raw materials are discussed and foster international programmes in the areas of energy efficiency, renewable energy and raw materials;

(c) foster the exchange of aggregated market data in the area of energy and raw materials;

(d) promote research, development and innovation in the areas of energy efficiency, renewable energy and raw materials;

(e) foster exchange of information and best practices on domestic policy developments in the area of renewable energy; and

[1] Points (c) and (e) do not cover geological and other minerals distribution data.

(f) promote internationally recognised standards of safety and environmental protection for offshore oil, gas and mining operations by increasing transparency and sharing information, including on industrial safety and environmental performance.

PUBLIC

ARTICLE 14.8

Assessment of environmental impact

1. Each Party shall ensure that its law requires an environmental impact assessment to be carried out in accordance with its law before that Party grants an authorisation for a project related to the production of energy goods or raw materials, if that project, by virtue, amongst others, of its nature, size or location may have a significant impact on the aspects of the environment set out in paragraph 2.

2. The environmental impact assessment referred to in paragraph 1 shall identify and assess, as appropriate, the significant effects of a project on the following aspects of the environment:[1]

(a) population and human health;

(b) biodiversity;

(c) land, soil, water, air and climate; and

[1] For greater certainty, in accordance with Indonesian law, the identification of the significant effects of the projects on the aspects of the environment listed in points (a) to (d) may vary from one area to another.

(d) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

3. Each Party shall ensure that the relevant entities[1] are given a reasonable opportunity and time to provide comments on an environmental impact assessment report carried out for the purposes of the requirement referred to in paragraph 1.

4. Each Party shall take into account the findings of the environmental impact assessment and make the results of the process referred to in paragraph 3 available to the relevant entities[2], prior to granting authorisation for the project.

PUBLIC

ARTICLE 14.9

Offshore risk and safety

1. Each Party shall ensure that regulatory functions relating to the safety and environmental protection of offshore oil and gas operations are conducted independently from functions relating to economic development or licensing of offshore oil and gas operations, such as by ensuring that they are conducted by separate legal entities.

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1 For greater certainty, the relevant entities are:
(a) for the Union, the "public concerned", as identified pursuant to its law; and
(b) for Indonesia, directly affected communities as set out in its law, environmental observers, researchers, or supporting non-governmental organisations which have fostered or assisted the directly affected communities as a part of the directly affected communities.

2 For greater certainty, the relevant entities are:
(a) for the Union, the public concerned; and
(b) for Indonesia, directly affected communities.

2. Each Party shall establish the conditions necessary for safe offshore exploration and production of oil and gas in its territory in order to protect the marine environment and coastal communities against pollution. Such conditions shall be based on relevant international standards of safety and environmental protection for offshore oil and gas operations that are recognised by the Parties.

PUBLIC

ARTICLE 14.10

Renewable fuels

1. The Parties recognise the important contribution of renewable fuels, including fuels of non-biological origin, such as renewable hydrogen and its derivatives, in reducing greenhouse gas emissions to address climate change.

2. With respect to renewable fuels, including biofuels produced from palm oil, the Parties affirm that they will act consistently with international trade rules by which they are bound, in particular rules relating to the principle of non-discrimination, including, where applicable, the TBT Agreement.

3. In accordance with Chapter 17 (Economic Cooperation and Capacity Building), the Parties shall, as appropriate, cooperate on convergence or harmonisation of certification schemes for renewable fuels, including with regard to life-cycle emissions, sustainability and safety standards.

ARTICLE 14.11

Energy transition

1. The Parties recognise the importance of rapidly increasing the deployment of emerging clean energy technologies and of expanding clean energy capacity, including by accelerating the deployment of net-zero technologies such as hydropower, micro-hydro as well as offshore and onshore wind power generation, solar photovoltaics (PV), concentrated solar power, sustainable bioenergy, geothermal, ocean and tidal energy, and renewable hydrogen, as well as other sustainable energies and technologies, and therefore reaffirm their commitment to achieving a clean energy transition in order to meet net-zero emissions in line with their respective commitments under the Paris Agreement.

2. For the purposes of paragraph 1 and pursuant to Chapter 17 (Economic Cooperation and Capacity Building), the Parties shall cooperate in assisting each other, by means of a dedicated forum, to achieve their clean energy transition goals, including through cooperation in the form of technical assistance, exchanges of best practices, policy support and dialogue or other forms of development cooperation as they may agree, as well as exchanges of views and information regarding transfers of technology.

3. The Parties shall facilitate existing and future investments in each other's territories that enable the expansion of access to clean and reliable energy, and that build and upgrade reliable, resilient power infrastructure, including transmission and smart grids, without prejudice to relevant requirements in their law.

PUBLIC

4. On request of a Party, the Parties shall hold technical consultations on relevant requirements of their laws which the requesting Party considers to hamper existing or future investments in renewable and clean energy, as well as the power-generating infrastructure of investors of the requesting Party. The Parties shall endeavour to resolve the matter as expeditiously as possible and in any event within 60 days of the date of receipt of the request. If the requesting Party believes that the matter is urgent and requires immediate resolution, it may request a shorter time frame. In such a case, the requested Party shall give positive consideration to that request. If the Parties cannot resolve the matter, the requesting Party may suspend in full or in part the implementation of the cooperation provided for in paragraph 2.

5. Technical consultations pursuant to this Article shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

ARTICLE 14.12

Support measures in trade and investment in renewable energy production

If a Party makes available financial support for the production of electricity from renewable sources it shall:

(a) ensure that it is granted in a transparent and non-discriminatory manner;

PUBLIC

(b) clearly define the technical specifications which are to be met by renewable energy equipment and systems in order to benefit from the support; and

(c) ensure that such support is designed so as to maximise the integration of electricity from renewable sources into its electricity market.[1]

PUBLIC

ARTICLE 14.13

Cooperation on raw materials

1. The Parties shall, as appropriate, in accordance with Chapter 17 (Economic Cooperation and Capacity Building), cooperate in the area of raw materials value-chains with a view to, *inter alia*:

(a) facilitating trade and investment linkages to ensure the establishment of well-functioning, sustainable and resilient raw materials supply chains; and

(b) promoting responsible business conduct in accordance with relevant international standards that have been endorsed or are supported by the Parties and working jointly towards adoption of such international standards in their supply chains, including those governing environmental, social, and governance (hereinafter referred to as "ESG") matters, with the aim of encouraging investments and value addition in their respective economies.

[1] For Indonesia, the support would be reflected in the Electricity Supply Business Plan (*Rencana Usaha Penyediaan Tenaga Listrik*/RUPTL), as set out in Indonesian law.

2. In order to promote trade and investment linkages, the Parties shall facilitate business-to-business networking that can promote investment opportunities and facilitate integration of raw materials value chains.

3. On request of a Party, the Parties shall hold technical consultations on relevant requirements in their laws which the requesting Party considers to hamper existing or future investments, as well as trade or investment linkages along the raw materials value chains. The Parties shall endeavour to resolve the matter as expeditiously as possible and in any event within 60 days of the date of receipt of the request. If the requesting Party believes that the matter is urgent and requires immediate resolution, it may request a shorter time frame. In such a case, the requested Party shall give positive consideration to that request. If the Parties cannot resolve the matter, the requesting Party may suspend in full or in part the implementation of the cooperation provided in this Article.

4. Recognising that research, development and innovation are key elements to further developing efficiency, sustainability and competitiveness of raw materials value chains, the Parties agree to cooperate as appropriate, including by:

(a) facilitating, such as through joint initiatives, research, development, innovation and dissemination of environmentally sound and cost-effective technologies, processes and practices across raw materials value chains, including by identifying suitable solutions for the effective implementation of this Chapter, such as promoting a centre of excellence for sustainable raw materials based on the mutual appreciation of the Parties of progress made towards the adoption of international standards, including ESG considerations in their supply chains;

PUBLIC

(b) strengthening capacity building in the context of research, development and innovation initiatives;

(c) the identification of areas of common interest for cooperation on research, development, and innovation activities covering the entire raw materials value chain, including cutting-edge technologies, smart mining and digital mines; and

(d) facilitating the exchange of best practices on mining and processing licences, permitting and procedures.

5. Recognising their shared commitment to responsible and sustainable production and sourcing of raw materials and their mutual interest to facilitate the integration of raw materials value chains, the Parties shall cooperate on any relevant issue of mutual interest, such as:

(a) responsible mining practices and raw materials value chains sustainability, including the contribution of raw materials value chains to the fulfilment of the United Nations Sustainable Development Goals, and ensuring that both Parties foster capacity building and technology development to effectively achieve those objectives;

(b) effective and efficient implementation of environmental and social impact assessments and standards in order to underpin the relevant permitting and licensing processes in the area of raw materials; and

PUBLIC

(c) ESG standards, including safety standards, along the raw materials value chains and enforcement of the regulatory frameworks in order to foster the application and improvement of best available technologies and capacity building efforts while ensuring that domestic industries are not unduly burdened.

6. In order to implement the cooperation provided for in this Article and in accordance with Chapter 17 (Economic Cooperation and Capacity Building), the Parties may decide to designate a dedicated forum for discussion or undertake any joint initiative aimed at strengthening sustainable value chains, experience-sharing or identifying best practices in common areas of interest.

7. Technical consultations pursuant to this Article shall not replace consultations pursuant to Article 22.4 or dialogues under Chapter 21 (Bilateral Dialogue Mechanism), unless the Parties agree otherwise.

ARTICLE 14.14

Export and domestic pricing

1. Except in the case of export duties, taxes or other charges that are permissible under Article 2.6(2), a Party shall not impose, by means of any measure such as license or minimum export pricing requirement, a higher price for its exports of raw materials to the other Party than the price charged for such raw materials when destined for the domestic market.

PUBLIC

2. A Party may regulate the price of the supply of raw materials to a non-household customer in its market in order to achieve a public policy objective. Such regulated price shall be based on objective, clearly defined, transparent and non-discriminatory criteria, proportionate to the public policy objective pursued and made publicly available. On request of the other Party, the Party that has introduced or maintains a regulated price shall provide any further information.

PUBLIC

CHAPTER 15

TRADE AND SUSTAINABLE GROWTH AND DEVELOPMENT

ARTICLE 15.1

Overarching considerations

The Parties agree to this Chapter in view of the following overarching considerations:

(a) desiring to maximise synergies between the opportunities brought by this Agreement for enhancing sustainability and growth and to seize its full potential to contribute to the strengthening and expansion of their bilateral trade and investment relations in a sustainable manner;

(b) sharing the view that this Agreement presents unique opportunities to enhance their partnership and work together in responding to global challenges;

(c) concurring on the importance of promoting trade and sustainable development in a mutually supportive manner;

(d) acknowledging the differences in their levels of development and emphasising their shared objective of further integrating sustainable development in the fostering of their trade and investment relations;

(e) recalling their commitment to implement this Agreement in a manner that contributes to inclusive economic growth, social progress, green transition and environmental protection;

(f) recognising the need for joint action to address global sustainability challenges such as climate change and biodiversity loss and pollution, as well as ensuring efforts to eradicate poverty, food insecurity, and inequality;

(g) noting the importance of enhancing the resilience and integration of international supply chains, and mindful of the opportunities for SME, smallholders and other relevant stakeholders on both sides;

PUBLIC

(h) underlining that it is critical to ensure an open, transparent and rules-based international trading system as well as stressing their determination to work together so that their trade and investment relationship enhances sustainable development;

(i) recalling the importance of trade for raising standards of living and promoting job creation and decent work, and allowing for the optimal use of the world's resources in accordance with the objective of sustainable development;

(j) reaffirming their respective commitments under multilateral instruments and agreements such as the International Labour Organization (hereinafter referred to as "ILO") Constitution, adopted as Part XIII of the Treaty of Versailles, signed on 28 June 1919 and the fundamental ILO Conventions, the Paris Agreement, the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as "UNFCCC"), and the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (hereinafter referred to as "CBD"); and

(k) seeking to protect and preserve the environment, to realise decent work for all, and to enhance the means for doing so in a manner consistent with their international obligations and building on their respective growth and development strategies.

PUBLIC

SECTION A

TRADE AND SUSTAINABLE DEVELOPMENT

PUBLIC

ARTICLE 15.2

Context, objectives and scope

1. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development, adopted in Rio de Janeiro on 14 June 1992, the Plan of Implementation of the World Summit on Sustainable Development of 2002, the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference (hereinafter referred to as "ILC") at its 97th session held in Geneva on 10 June 2008 (hereinafter referred to as "ILO Declaration on Social Justice for a Fair Globalization") and as amended in 2022, the outcome document of the United Nations Conference on Sustainable Development of 2012 entitled "The Future We Want", adopted by the UN General Assembly on 27 July 2012, the outcome document entitled "Transforming our world: the 2030 Agenda for Sustainable Development" and its Sustainable Development Goals (hereinafter referred to as "2030 Agenda"), adopted by the United Nations General Assembly on 25 September 2015.

2. The Parties affirm their commitment to pursue sustainable development, which encompasses three dimensions: economic development, social development and environmental protection, all three being inter-dependent and mutually reinforcing. The Parties shall promote the development of international trade and investment, including in their bilateral relationship, in a way that contributes to the objective of sustainable development. The Parties shall encourage greater policy coherence between trade policies, on the one hand, and economic, social and environmental policies, on the other hand.

3. In light of the above, except as otherwise provided in this Chapter, this Chapter covers trade and investment-related aspects of sustainable development, contributing to the implementation of the 2030 Agenda.

4. The Parties agree on the importance of enhanced dialogue and cooperation for the effective implementation of this Chapter, in order to achieve sustainable development in trade and to improve their trade relationship in a sustainable manner. The Parties emphasise that the implementation of this Chapter should not be used as protectionist trade measures and should be consistent with the Parties' international obligations under the WTO and other relevant international agreements to which the Parties are party.

PUBLIC

5. The Parties recall that, with a view to achieving the purpose of the Paris Agreement, they are to undertake and communicate ambitious efforts which will represent a progression over time and reflect their highest possible ambition. They also recall that the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. They stress the importance of this as part of their actions to address and tackle climate change as a key element to achieve the objective of sustainable development, as reflected in their respective growth and development strategies, policies and priorities.

PUBLIC

ARTICLE 15.3

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its objectives, strategies, policies and priorities on sustainable development, to establish the levels of domestic environmental and social protection it deems appropriate and to adopt or modify accordingly its relevant law and policies, in a manner consistent with internationally recognised standards and agreements, to which it is party.

2. Each Party shall strive to ensure that its relevant law and policies provide for and encourage high levels of domestic environmental and social protection and shall strive to continue improving such levels, law and policies.

ARTICLE 15.4

Upholding levels of protection

PUBLIC

1. As sustainable development encompasses the three dimensions of economic development, social development and environmental protection, the Parties stress that weakening the levels of environmental and social protection is detrimental to the objectives of this Chapter. Accordingly, a Party shall not weaken the levels of protection afforded in its environmental or labour law in order to encourage trade or investment.

2. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour law, in order to encourage trade or investment.

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

4. The Parties recognise the right of each Party to exercise reasonable discretion and to make good faith decisions with regard to the allocation of enforcement resources in accordance with the priorities for enforcement of its environmental and labour law, provided that the exercise of that discretion is not inconsistent with its obligations under this Chapter.

ARTICLE 15.5

Trade and labour

1. The Parties recognise the importance of full and productive employment and decent work for all, in particular as a response to globalisation, and reaffirm their commitment to promote the development of bilateral trade in a way that is conducive to those objectives, including for women and young people.

2. In accordance with its obligations deriving from ILO membership[1] and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference on 18 June 1998, as amended at its 110th Session in 2022, each Party shall respect, promote and effectively implement the principles concerning the fundamental rights at work, as defined in the fundamental ILO Conventions, which are:

(a) the 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;

[1] For the Union, "ILO membership" means the ILO membership of the Member States.

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

(e) a safe and healthy working environment.

3. Each Party shall effectively implement the ILO Conventions and Protocols ratified by Indonesia and by the Member States respectively.

4. Each Party shall remain a party, in good faith, to the fundamental ILO Conventions ratified by Indonesia and by the Member States respectively.

5. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions to which they are not yet party.

6. Recalling that the elimination of forced labour is among the objectives of the 2030 Agenda, the Parties underline the importance of the ratification and effective implementation of the Protocol of 2014 to the Forced Labour Convention of 1930, adopted at Geneva on 11 June 2014 by the ILC at its 103rd Session.

PUBLIC

7. The Parties shall consult each other and cooperate with each other, as appropriate, on trade-related labour matters of mutual interest, such as the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, social protection, social inclusion, social dialogue and gender equality. That cooperation may be conducted bilaterally, regionally and in international fora. The Parties shall regularly exchange, as appropriate, at the meetings of the Committee on Trade and Sustainable Growth in its specific configuration for Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil (hereinafter referred to as the "Committee" for the purposes of this Chapter) or at other occasions, information and experiences regarding the implementation of multilateral labour conventions that each Party has respectively ratified, as well as information on their respective situations with regard to the ratification of ILO Conventions or Protocols that are classified as up-to-date by the ILO to which they are not yet party.

8. Recalling the ILO Declaration on Social Justice for a Fair Globalisation, the Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

9. Each Party shall promote decent work as expressed in the ILO Declaration on Social Justice for a Fair Globalization, in particular with regard to:

(a) decent working conditions for all with regard to, amongst others, wages and earnings, working hours and other conditions of work; and

PUBLIC

(b) non-discrimination in respect of working conditions, including for migrant workers.

10. Each Party shall, consistent with the relevant ILO Conventions to which it is a party, and taking into account related ILO Recommendations:

(a) adopt and implement measures and policies regarding occupational health and safety, including the prevention of occupational injury or illness and compensation in case of such injury or illness; and

(b) maintain an effective labour inspection system for the enforcement of its labour provisions.

PUBLIC

ARTICLE 15.6

Trade and gender[1] equality

1. The Parties recognise that inclusive trade policies contribute to advancing women's economic empowerment and gender equality, in line with the 2030 Agenda. They acknowledge the important contribution by women to economic growth through their participation in economic activity, including international trade. The Parties commit to implementing this Agreement in a manner that promotes and enhances women's economic empowerment and gender equality, without prejudice to the right of each Party to establish its own scope and levels of protection in that regard, in a way that is not inconsistent with its relevant international commitments.

[1] For the purposes of this Article, each Party may interpret and apply the term "gender" in accordance with its laws and regulations.

2. The Parties commit to strengthening their trade relations and cooperation in ways that effectively provide equal opportunities and treatment for women and men to benefit from the provisions of this Agreement, including in matters of employment and occupation.

3. Each Party shall effectively implement its obligations under international agreements addressing gender equality and women's rights to which it is a party, including the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly in New York on 18 December 1979, noting in particular its provisions related to eliminating discrimination against women in economic life and in the field of employment.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of matters covered by this Article, among others, through activities to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.

5. The Parties agree on the importance of monitoring and assessing, in accordance with their domestic procedures, the impact of the implementation of this Agreement on equal opportunities and treatment provided for women in relation to trade.

PUBLIC

ARTICLE 15.7

Multilateral environmental agreements

1. The Parties recognise the importance of multilateral environmental agreements and governance as a response of the international community to global environmental challenges and as instruments to facilitate cooperation in addressing environmental challenges, in particular the need to take urgent action to tackle the triple planetary crisis of climate change, biodiversity loss and pollution, and stress the need to enhance the mutual supportiveness between trade and environmental policies.

2. Each Party shall effectively implement the multilateral environmental agreements (hereinafter referred to as "MEAs") and the protocols to those agreements to which it is a party.

3. The Parties shall regularly exchange at the meetings of the Committee and, as appropriate, on other occasions, information on their respective situation with regard to the ratification and, where relevant, on the implementation of MEAs, including the protocols to those agreements.

4. The Parties shall consult each other and cooperate with each other, as appropriate, on trade-related environmental matters of mutual interest, including in the context of MEAs. Such consultations and cooperation may include the sharing of information on policies and practices and the promotion of relevant initiatives to encourage the shift to a circular economy.

PUBLIC

5. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures to implement and further the objectives of the MEAs to which it is a party.

PUBLIC

ARTICLE 15.8

Trade and climate change

1. The Parties recognise the importance and the role of trade in pursuing the ultimate objective of the UNFCCC and the Paris Agreement, in addressing and tackling climate change by strengthening the full and effective implementation of the Paris Agreement in order to reach its temperature goal, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.

2. Pursuant to paragraph 1, each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement, including its obligations with regard to its nationally determined contribution and the pursuit of climate action measures and policies;

(b) promote the mutual supportiveness of policies and measures on trade and climate thereby contributing to the transition towards low-carbon, net-zero emissions and climate-resilient development, to resource efficiency and to sustainable resource management; and

(c) cooperate with the other Party to facilitate trade and investment concerning goods and services of particular relevance for the respective climate action policies in a manner consistent with this Agreement.

3. Recognising the role of trade in contributing to the response to the urgent threat of climate change, each Party shall remain a party, in good faith, to the Paris Agreement. This obligation shall constitute an essential element of this Agreement.

4. The Parties shall cooperate on climate change matters related to trade bilaterally, regionally and in international fora as appropriate, such as in the UNFCCC, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer, concluded at Montreal on 16 September 1987 (hereinafter referred to as "Montreal Protocol"), the International Maritime Organisation, the International Civil Aviation Organization and CBD. In relation to that, the Parties may work jointly in areas of mutual interest or priority, such as:

(a) the preparation, implementation and promotion of frameworks, policies and measures for carbon pricing action, including emission trading systems and emissions monitoring;

(b) the promotion of domestic and international carbon markets;

(c) the preparation, implementation and promotion of frameworks, policies and measures related to renewable energy and its development, including means to promote low-carbon technologies, sustainable bioenergy and biofuels, and sustainable transport;

PUBLIC

(d) the promotion of climate resilience;

(e) the promotion and support of energy efficiency and low emission technologies, including through technology transfer on mutually agreed terms and capacity building, within the context of the Paris Agreement and the Kigali Amendment, done at Kigali on 15 October 2016 (hereinafter referred to as "Kigali Amendment") to the Montreal Protocol; and

(f) the enhancement of the phase-out of ozone depleting substances, and the phase-down of hydrofluorocarbons as agreed under the Kigali Amendment to the Montreal Protocol through measures to control their production, consumption and trade, introduction of the environmentally friendly alternatives to them, the updating of safety and other relevant standards, and the combatting the illegal trade of substances regulated by the Protocol.

PUBLIC

ARTICLE 15.9

Trade and biological diversity

1. The Parties recognise the importance of ensuring the conservation and the sustainable use of biological diversity and the role of trade in pursuing these objectives, consistent with the CBD, its Kunming-Montreal Global Biodiversity Framework (hereinafter referred to as "GBF"), adopted in Montreal on 19 December 2022, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, adopted in Nagoya on 29 October 2010 (hereinafter referred to as "Nagoya Protocol"), the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, D.C., on 3 March 1973 (hereinafter referred to as "CITES"), and other relevant international instruments to which they are party, and the decisions adopted thereunder.

2. The Parties affirm the importance of ensuring the legality and the sustainability of wildlife trade, as regulated and facilitated under CITES, and recognise that illegal trade undermines efforts to conserve and sustainably manage those natural resources and has negative economic, social and environmental impacts.

PUBLIC

3. Pursuant to paragraph 1, each Party shall:

(a) adopt and implement appropriate effective measures, which are consistent with its commitments under international agreements to which it is a party, to combat illegal wildlife trade, including with respect to third countries as appropriate, such as monitoring and enforcement measures, balanced and unbiased awareness raising campaigns and other initiatives;

(b) promote the long-term conservation and sustainable use of the animal and plant species listed in the Appendices to the CITES, and the inclusion of other species in those Appendices where their conservation status is considered at risk because of international trade, as well as make efforts to conduct periodic reviews which may result in recommendations to amend the Appendices to the CITES in order to ensure that they properly reflect the conservation needs of species subject to international trade;

(c) promote and encourage trade in products derived from, or which contribute to, the sustainable use of biological resources and the conservation of biological diversity in accordance with relevant international agreements to which it is a party;

(d) take measures to ensure the conservation and the sustainable use of biological diversity in accordance with the GBF; and

PUBLIC

(e) establish appropriate, effective and proportionate measures to ensure compliance with the principles of prior informed consent and fair and equitable sharing of benefits arising from the utilisation of genetic resources and associated knowledge.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, including under the CBD and the CITES. Such cooperation may cover, among others:

(a) exchange of information with the other Party on initiatives and good practices concerning trade in products and services derived from the sustainable use of biological resources with the aim of conserving biological diversity, such as strategies, policy initiatives, programmes, action plans, and consumer awareness campaigns;

(b) trade and the conservation and sustainable use of biological diversity, including the development and application of natural capital and ecosystem accounting methods, the valuation of ecosystems and their services and related economic instruments;

(c) combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation;

(d) access to genetic resources as well as the fair and equitable sharing of benefits from their utilisation consistent with the Nagoya Protocol, including through measures to address situations of non-compliance with applicable laws and regulatory requirements; and

PUBLIC

(e) increasing the level of financial resources and domestic resource mobilisation to implement national biodiversity strategies and action plans in accordance with Target 19 of the GBF.

PUBLIC

ARTICLE 15.10

Trade in timber and timber products and sustainable forest management

1. The Parties recognise the importance of the conservation and sustainable forest management in contributing to the Parties' economic, environmental and social objectives and the role of trade, including in timber and timber products, in pursuing that objective.

2. In light of paragraph 1, each Party shall:

(a) implement measures to combat illegal logging and related trade, including, as appropriate, with respect to third countries;

(b) encourage the conservation and sustainable management of forests, as well as trade and consumption of timber and timber products from sustainably managed forests and harvested in compliance with the applicable laws in the Union and Indonesia respectively, in particular through the effective implementation and monitoring of the Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the European Union, done at Brussels on 30 September 2013; and

(c) exchange information with the other Party on trade-related initiatives on sustainable forest management, forest conservation and forest governance, and cooperate to maximise the impact and to ensure the mutual supportiveness of their respective policies of mutual interest.

3. The Parties shall work together bilaterally, regionally and in international fora on matters concerning trade and the conservation of forests, the combat against illegal logging, as well as sustainable forest management with a view to minimising deforestation and forest degradation.

4. Recognising that deforestation is one of the drivers of global warming and biodiversity loss, the Parties shall exchange knowledge and experiences on ways to encourage the consumption and trade in products from supply chains not related to deforestation.

ARTICLE 15.11

Trade and sustainable management of marine biological resources and aquaculture

1. The Parties recognise the importance of ensuring the conservation and sustainable management, in a way that is consistent with achieving economic, social and environmental benefits, of marine biological resources and their ecosystems, as well as the promotion of responsible and sustainable aquaculture, and fisheries products free from illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing, and the role of trade in pursuing those objectives.

PUBLIC

2. The Parties recognise the efforts and measures already undertaken by the Parties to fight against IUU fishing, recalling their commitment in Article 15.5.

3. Pursuant to paragraph 1, each Party shall:

(a) implement long-term conservation and management measures and sustainable exploitation of marine biological resources as defined in UNCLOS and other instruments of the United Nations and Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") relating to these matters[1];

(b) act consistently with the principles and encourage compliance with the objectives of UNCLOS, UNFSA, the FAO Code of Conduct for responsible Fisheries, adopted by Resolution 4/95 of 31 October 1995, and the PSMA, as well as promote coherence with the main objectives of the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted in Rome on 24 November 1993;

[1] The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 August 1995 (hereinafter referred to as "UNFSA") and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome on 22 November 2009 (hereinafter referred to as "PSMA").

(c) cooperate actively in the work of the Regional Fisheries Management Organisations (hereinafter referred to as "RFMOs") to which they are members, observers, or cooperating non-contracting parties, with the aim of ensuring the sustainable exploitation, management and conservation of marine biological resources and the marine environment, including through the effective implementation of adopted decisions, resolutions, and conservation and management measures;

(d) implement effective measures to combat IUU fishing and to exclude products obtained from IUU fishing from being imported into its territory, in accordance with the WTO rules and other relevant international instruments, and cooperate with the other Party to this end, including by facilitating the exchange of information; and

(e) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of matters covered by this Article, bilaterally, regionally and international fora, as appropriate, including in the WTO, FAO, RFMOs and under other multilateral instruments in this field. This cooperation shall aim to achieve the following objectives:

(a) promotion of sustainable fishing and aquaculture practices;

PUBLIC

(b) facilitation of trade in sustainable fishery products and trade in fish, and seafood products from sustainably managed fisheries and aquaculture; and

(c) effective fisheries management, including with respect to measures for the monitoring and inspection of fishery activities; cooperation in this regard may include, as may be decided by the Parties, activities on fisheries inspection or on the implementation of electronic monitoring and reporting systems, for instance through exchanges of good practices or technical assistance and capacity building in accordance with Chapter 17 (Economic Cooperation and Capacity Building).

PUBLIC

ARTICLE 15.12

Trade and investment supporting sustainable development

1. The Parties confirm their commitment to enhance the contribution of trade and investment to sustainable development in its economic, social and environmental dimensions.

2. The Parties recognise that sustainability schemes or standards or other voluntary initiatives can contribute to the achievement and maintenance of high levels of economic development, environmental protection and social development and complement domestic regulatory measures.

3. The Parties recall their respective commitments with respect to environmental goods pursuant to Article 2.5.

4. The Parties recall their respective commitments on environmental services and manufacturing activities pursuant to Chapter 8 (Liberalisation of Investment and Trade in Services).

5. Pursuant to paragraph 1, each Party shall strive to promote and facilitate trade and investment in:

(a) environmental goods and services of particular relevance for climate change mitigation and adaptation, including through the development of policy frameworks conducive to support the access to financing and deployment of best available technologies;

(b) goods that contribute to enhanced social conditions; and

(c) goods subject to credible, transparent, factual and non-misleading sustainable assurance schemes and voluntary sustainability standards, such as fair and ethical trade schemes and eco-labels.

6. The Parties shall cooperate bilaterally, regionally and in international fora on matters covered by this Article, among others, through the exchange of information, best practices and outreach initiatives. This cooperation may cover, among others:

(a) the impact of trade and investment rules on labour and environmental laws, regulations, norms and standards, as well as the impact of labour and environmental rules on trade and investment, including on the development of strategies and policies on sustainable development;

PUBLIC

(b) encouraging the uptake of credible, transparent, factual, and non-misleading sustainable assurance schemes, and promoting awareness-raising actions and information and promoting public education campaigns, taking into account financial and operational costs for operators, particularly SMEs; and

(c) sharing information and experience about trade-related aspects concerning the definition and implementation of green growth strategies and policies, including but not limited to sustainable production and consumption, climate change mitigation and adaptation, and environmentally sound technology.

PUBLIC

ARTICLE 15.13

Trade and responsible business conduct

1. The Parties recognise the importance of responsible business conduct, corporate social responsibility practices and the responsible management of supply chains and the role of trade in pursuing these objectives.

2. Pursuant to paragraph 1, each Party shall:

(a) promote coherence between corporate social responsibility and responsible business conduct and its laws, regulations and policies, by providing a supportive policy framework that encourages the uptake of relevant practices by businesses, taking into account local needs and circumstances; and

(b) encourage the use of relevant international instruments, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted in Geneva in November 1977, the United Nations Global Compact, the United Nations Guiding Principles on Business and Human Rights, endorsed by the United Nations Human Rights Council in its Resolution 17/4 of 16 June 2011, and the OECD Guidelines for Multinational Enterprises, including international sector-specific guidelines[1], as appropriate.

3. The Parties shall work together to strengthen their cooperation on trade-related aspects of matters covered by this Article bilaterally, regionally and in international fora, as appropriate, among others through the exchange of information, best practices, outreach initiatives, training and education activities, capacity building and technical advice.

[1] Such as: the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and its supplements, the OECD Due Diligence Guidance for Meaningful Stakeholders Engagement in the Extractive Sector, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, the Principles for Responsible Investment in Agriculture and Food Systems and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

SECTION B

COOPERATION ON TRADE-RELATED SUSTAINABILITY REGULATORY REQUIREMENTS AND OTHER SUSTAINABILITY MATTERS

PUBLIC

ARTICLE 15.14

Objectives

1. With a view to further realising the benefits stemming from the Parties' commitments on trade and sustainable development and to maximising the potential of this Agreement to seize the economic opportunities brought by enhanced sustainability, in support of each Party's domestic growth and development objectives and priorities, the Parties are committed to supporting a stable and predictable trade environment, including by cooperating on the implementation of sustainability regulatory requirements that may affect trade between them (hereinafter referred to as "trade-related sustainability regulatory requirements"). The Parties stress that, consistent with WTO law, trade-related sustainability regulatory requirements should be proportionate, non-discriminatory and implemented in a transparent manner.

2. The Parties recognise the importance of capacity building, cooperation on technology and financial and other resources to facilitate the effective implementation of trade-related sustainability regulatory requirements.

PUBLIC

ARTICLE 15.15

Principles

1. The Parties will, upon the entry into force of this Agreement, engage in further discussions and put in place a series of actions and cooperation activities with the aim of supporting an effective implementation of their commitments under this Chapter.

2. The Parties consider that this Agreement offers a bespoke platform for dialogue and cooperation to pursue sustainable growth, building on their respective strategies, policies and priorities, and takes into account their levels of development.

3. The Parties will collaborate with respect to increased market access opportunities for products obtained sustainably and in accordance with the law of each Party from smallholders, cooperatives and local communities. The Parties recognise the role those actors play in achieving sustainable development and stress the importance of respecting collective land rights of local communities, in accordance with each Party's laws and relevant international commitments.

ARTICLE 15.16

Facilitation of market access

1. The Parties agree to discuss specific measures and initiatives to attain the goal set out in Article 15.13 within the framework of the Committee. Such measures and initiatives include the identification of opportunities for market access required to spur the exportation of sustainably obtained or produced products, and measures and initiatives to expedite and facilitate trade in those products between the Parties, including through:

(a) the exchange of information and cooperation to promote the mutual supportiveness of trade and sustainability objectives, including as appropriate through cooperation on credible, transparent, factual, and non-misleading sustainability assurance schemes, on traceability systems and on supporting compliance; in this context, the Parties affirm the importance of supporting producers and exporters, including SMEs, to participate in and benefit from trade and sustainability efforts under this Agreement;

(b) actions and measures to enhance trade in goods contributing to enhanced social conditions and environmental protection, such as goods and services contributing to a resource-efficient, low-carbon or circular economy, or goods that are the subject of credible, transparent, factual, and non-misleading sustainability assurance schemes and mechanisms; such actions may include measures to enhance market access, technical assistance, capacity building and trade facilitation, as appropriate;

PUBLIC

(c) the Committee:

(i) will, upon a substantiated proposal of a Party, swiftly start discussions on goods and services from one Party or both Parties which significantly contribute to achieving sustainability objectives in priority economic sectors and areas, notably agriculture, forestry, fishery, renewable energy, as well as environmental services and services incidental to the manufacturing of green goods, in order to enhance the potential of trade under this Agreement for sustainable growth and development;

(ii) shall discuss and agree on the priority economic sectors and areas, and shall then aim at agreeing on a list of relevant goods and services in those sectors and areas and, as appropriate, identify additional incentives under this Agreement to promote the trade in those goods and services, namely preferential tariff treatment, preferential services and investment conditions, technical assistance and capacity building, within three years from the entry into force of this Agreement, unless finalised earlier or within a timeline otherwise agreed by the Committee; and

(iii) may decide to make a recommendation on the matter to the Trade Committee, which can decide if additional incentives are needed pursuant to point (ii); if the Trade Committee agrees on additional incentives that would require amending this Agreement, the relevant procedures set out in Chapters 2 (National Treatment and Market Access for Goods), 8 (Liberalisation of Investment and Trade in Services), or 24 (Institutional Provisions), respectively, shall apply.

PUBLIC

2. Measures and initiatives that may be taken pursuant to paragraph 1 shall, upon a proposal of a Party, be reviewed by the Committee. For greater certainty, the Committee does not have the authority to review decisions taken by the Trade Committee.

PUBLIC

SECTION C

HORIZONTAL PROVISIONS AND INSTITUTIONAL ARRANGEMENTS

ARTICLE 15.17

Scientific and technical information

1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations, except if reliance on such international standards, guidelines or recommendations would be impracticable or inappropriate.

2. The Parties acknowledge that if there is a threat of serious or irreversible damage to the environment or to occupational safety and health, the lack of full scientific certainty shall not be used as a reason for postponing precautionary measures to prevent such damage. Such measures should be proportionate, non-discriminatory and implemented transparently, in accordance with WTO law.

PUBLIC

ARTICLE 15.18

Transparency

1. The Parties recognise the importance of the application of the rules on transparency and good regulatory practices in accordance with Chapters 19 (Good Regulatory Practices) and 20 (Transparency), in particular the rules providing reasonable opportunities for a person to submit views, in accordance with the Parties' respective rules and procedures, in respect of:

(a) measures, including any laws and regulations, aimed at protecting the environment and labour conditions that may affect trade or investment; and

(b) trade or investment measures, including laws and regulations, that may affect the protection of the environment or labour conditions.

2. Each Party shall give due consideration to communications and opinions from a person on matters related to this Chapter, including for the definition and implementation of related cooperation activities, and may involve such stakeholders further in those activities.

3. Each Party may share such communications and opinions with its own domestic advisory groups established pursuant to Article 24.7, and may inform, as it deems appropriate, the other Party via the contact point established pursuant to Article 15.20(4).

PUBLIC

ARTICLE 15.19

Review of sustainability impacts

The Parties commit to jointly or individually review, monitor and assess the economic, environmental and social impact of the implementation of this Agreement through their respective policies, practices, participative processes and institutions. The Parties will do so also through the Committee, in particular through the exchange of information and experience with regard to methodologies and indicators for trade sustainability impact assessments.

ARTICLE 15.20

Committee on Trade and Sustainable Growth in its specific configuration for Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil, and contact points

PUBLIC

1. This Article complements and further specifies Article 24.4.

2. The Committee is established pursuant to Article 24.4.

3. The Committee shall have the following functions:

(a) to facilitate, monitor and review the implementation of this Chapter;

(b) to carry out the tasks referred to in point (b) of Article 22.14(3);

(c) to contribute to the work of the Trade Committee on matters covered by this Chapter, including with regard to topics for discussion with the Civil Society Forum established pursuant to Article 24.2(4) and domestic advisory groups established pursuant to Article 24.7; and

(d) to consider any other matter related to this Chapter as the Parties may agree.

4. Each Party shall, within one month after the entry into force of this Agreement, designate a contact point within its administration to facilitate communication and coordination between the Parties on any matter relating to this Chapter. Each Party shall notify the other Party of the contact details of its contact point and of any change of those contact details.

PUBLIC

ARTICLE 15.21

Bilateral regulatory dialogue

1. The Parties recall the objectives of Chapters 19 (Good Regulatory Practices), 20 (Transparency) and 21 (Bilateral Dialogue Mechanism) and reaffirm the importance of enhancing the transparency and predictability of their respective regulatory environments, including with regard to the development and application of measures concerning matters covered by this Chapter.

2. When exchanging information, discussing and cooperating on their measures concerning matters covered by this Chapter, the Parties shall make use of the dialogue established pursuant to Chapter 21 (Bilateral Dialogue Mechanism) subject to the following conditions:

(a) information by the Parties on measures concerning matters covered by this Chapter pursuant to Article 21.2 may include information provided upon the request of a Party or upon a Party's own initiative, if that Party deems appropriate;

(b) either Party may request a dialogue on the design, implementation or application of the relevant measures of the other Party;

(c) when engaging in the dialogue, the Parties shall carry it out with a view to seeking mutually acceptable outcomes, such as reaching a common understanding of the measure, exchanging relevant information, clarifying potential concerns expressed by the requesting Party, reaching, if possible, a mutually satisfactory outcome taking into consideration any proposed solutions, in particular those that may support the objectives of this Agreement, including the facilitation of trade, and its implementation; and

(d) unless the Parties agree otherwise, the dialogue related to measures concerning matters covered by this Chapter shall be conducted in the framework of the Committee, without prejudice to the competence of other institutional bodies established under this Agreement to also discuss the matter, if the Parties so agree; the Committee may agree to make recommendations as appropriate to the Trade Committee.

PUBLIC

ARTICLE 15.22

Pre-dispute resolution

1. In case of a disagreement or concern on any matter arising under this Chapter, a Party may request the other Party to discuss the matter in the Committee, by delivering a written request to the contact point of the other Party. The contact point of the receiving Party shall inform the Trade Committee of any such request.

2. Upon receipt of the written request referred to in paragraph 1, the Committee shall promptly enter into good faith discussions. The Committee shall make every attempt to reach a joint understanding and mutually satisfactory outcome on the matter.

3. The discussions shall be deemed to be concluded within 30 days of the receipt of the written request referred to in paragraph 1, unless they are concluded earlier. At any point in time during such discussions, the Committee may decide, pursuant to Article 24.4(5), to make a recommendation on the matter to the Trade Committee.

4. If the Committee fails to reach a mutually satisfactory outcome, a Party may have recourse to the procedures under Chapter 22 (Dispute Settlement) for any dispute concerning the interpretation and application of this Chapter within 30 days from the date of conclusion of the discussions in the Committee.

PUBLIC

5. In the exercise of its functions pursuant to point (d) of Article 24.2(1), the Trade Committee may at any point in time seek appropriate ways and methods of preventing disagreements or resolving disputes that may arise in areas covered by this Chapter.

PUBLIC

CHAPTER 16

SUSTAINABLE FOOD SYSTEMS

ARTICLE 16.1

Objective

1. Recognising the importance of strengthening policies and defining programmes that contribute to the development of sustainable, inclusive, healthy, equitable and resilient food systems, the objective of this Chapter is to establish cooperation to jointly engage in efforts to a transition towards sustainable food systems (hereinafter referred to as "SFS") for each Party.

2. This Chapter applies without prejudice to the rights of the Parties under other Chapters of this Agreement related to food systems or to sustainability, in particular Chapters 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade) and 15 (Trade and Sustainable Growth and Development).

ARTICLE 16.2

Scope

1. This Chapter shall apply to cooperation between the Parties to pursue collaborative efforts in developing and ensuring the sustainability of their respective food systems.

2. This Chapter includes provisions relating to cooperation on specific aspects of SFS, as provided in Articles 16.4 and 16.5.

PUBLIC

ARTICLE 16.3

Definition

1. The Parties recognise that the concept and definition of SFS are evolving at national and international levels and that currently no single concept or definition prevails. For the purposes of this Chapter, the Parties share the understanding that SFS refers to a food system that delivers food security and nutrition for all in such a way that aims to support the economic, social and environmental bases to ensure that food security and nutrition for future generations are not compromised.

2. Without prejudice to the Parties' respective laws, regulations and domestic practices, SFS may include the following characteristics:

(a) the sustainability of food production;

(b) the sustainability of food processing, distribution and marketing;

(c) the sustainability of food consumption including healthy diets; and

(d) the prevention and reduction of food loss and waste.

PUBLIC

ARTICLE 16.4

Sustainability of food production, processing, marketing and consumption, and the reduction in food loss and waste

1. Taking into account their respective priorities and circumstances, the Parties shall endeavour to cooperate with the objective of enhancing the sustainability and resilience of their respective food systems, by:

(a) ensuring sustainable food production, by promoting the sustainable use of chemical pesticides and fertilizers, such as by reducing their use and mitigating their harmful effects in the food chain, as appropriate and according to differences in the circumstances and agronomic conditions of the Parties;

(b) minimising the possible environmental and climate impact of food production to support a transition towards more sustainable food production, which contributes to decreasing greenhouse gas emissions related to food systems, increasing carbon sinks and reversing biodiversity loss;

(c) developing contingency plans to ensure the security of food supply in times of crisis;

(d) promoting sustainable food processing, transport, wholesale, retail and food services;

(e) promoting the uptake of healthy and sustainable diets;

(f) addressing efforts to develop food safety policies; and

(g) preventing and reducing food loss and waste in line with the United Nations Sustainable Development Goal Target 12.3.

2. The cooperation of the Parties referred to in paragraph 1 may include research and innovation collaboration and exchange of relevant and available information, expertise and experiences.

PUBLIC

ARTICLE 16.5

Collaborative actions

1. In addressing fields relevant to SFS, collaborative actions are necessary to further facilitate the achievement of the objective of Article 16.1. Therefore, the Parties shall cooperate further in the area of SFS, including in the fields of food safety, fight against agri-food fraud, antimicrobial resistance and animal welfare.

2. The Parties shall exchange information relevant to their respective practices and experiences in the fields referred to in paragraph 1.

3. The cooperation of the Parties may include research and innovation collaboration and the exchange of expertise which are science-based in the fields referred to in paragraph 1.

ARTICLE 16.6

Action plan

1. In pursuing the objectives of this Chapter and in order to monitor the results obtained from its implementation, the Parties shall establish an annual action plan on fields referred to in this Chapter.

PUBLIC

2. Unless otherwise agreed by the Parties, the establishment and monitoring of the action plan referred to in paragraph 1 shall be in accordance with Article 17.5 and will include objectives and milestones for each of the actions included in it.

PUBLIC

ARTICLE 16.7

Committee on Trade and Sustainable Growth in its specific configuration for Chapter 16 (Sustainable Food Systems)

1. This Article complements and further specifies Article 24.4.

2. The Committee on Trade and Sustainable Growth in its specific configuration for Chapter 16 (Sustainable Food Systems) (hereinafter referred to as the "Committee" for the purposes of this Chapter) shall be responsible for the effective implementation and operation of this Chapter.

3. The Committee may, with respect to this Chapter, establish priorities for cooperation and work plans to implement those priorities.

ARTICLE 16.8

Cooperation in bilateral, multilateral or international fora

1. Taking account of their national priorities and circumstances, the Parties shall cooperate to address matters of joint or common interest related to the implementation of this Chapter.

2. The cooperation of the Parties may take place bilaterally or in multilateral and international fora.

PUBLIC

ARTICLE 16.9

Additional provisions

1. The Committee shall establish rules mitigating potential conflicts of interest of the participants in its meetings.

2. This Chapter shall apply without prejudice to the Parties' positions in any ongoing work or negotiation in relevant fora.

3. Any activities under this Chapter shall be the responsibility of the Parties and shall not affect the independence of their respective authorities in establishing rules and mitigating potential conflicts of interest.

4. Fully respecting the Parties' rights to regulate, nothing in this Chapter shall be construed so as to oblige a Party to:

(a) modify its import requirements;

(b) deviate from domestic procedures for preparing and adopting regulatory measures;

(c) take action that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objective; or

(d) adopt any particular regulatory outcome.

PUBLIC

ARTICLE 16.10

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Chapter.

CHAPTER 17

ECONOMIC COOPERATION AND CAPACITY BUILDING

PUBLIC

ARTICLE 17.1

Basic principles

1. The Parties recognise the importance of economic cooperation under this Agreement and shall promote cooperation in areas of mutual interest, taking into account the different levels of development and capacity of the Parties.

2. Economic cooperation shall foster inclusive sustainable development and contribute to achieving the 2030 Agenda. The Parties recognise the importance of economic cooperation to support the implementation of this Agreement, with the objective of maximising its benefits for both Parties and deepening their integration in global value chains.

3. The Parties shall cooperate in areas of mutual interest with the objective of achieving mutual benefits. The Parties shall encourage the involvement of relevant stakeholders in the implementation of economic cooperation and capacity building under this Agreement.

4. The Parties shall undertake economic cooperation and capacity building activities within the existing institutional and legal framework set by the Framework Agreement, in accordance with their respective laws and regulations. The Parties shall seek, if possible, to minimise duplication of ongoing activities and utilisation of resources, particularly under other trade and economic cooperation programmes.

PUBLIC

ARTICLE 17.2

Scope

This Chapter sets out basic principles and operational guidelines for economic cooperation and capacity building under this Agreement.

ARTICLE 17.3

Relations with other Chapters

This Chapter applies to all provisions for cooperation between the Parties included in other Chapters in this Agreement, unless otherwise specified. The application of this Chapter is without prejudice to the application of the provisions for cooperation between the Parties included in other Chapters in this Agreement.

ARTICLE 17.4

Areas and forms of cooperation

1. Economic cooperation and capacity building shall cover activities in areas of mutual interest and be carried out through forms to be agreed upon by the Parties.

2. The forms of cooperation may include:

(a) technical assistance;

(b) training;

(c) exchanges of data and information;

(d) seminars and workshops;

(e) sharing of best practices;

(f) studies;

(g) research and innovation;

(h) awareness raising on trade and investment opportunities; and

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(i) other forms of cooperation as may be agreed by the Parties.

3. The Parties agree that cooperation may focus on the following areas:

(a) trade-related aspects of agriculture; fisheries, marine products and aquaculture; manufacturing;

(b) areas relevant for specific Chapters of this Agreement, including:

(i) Chapter 2 (National Treatment and Market Access for Goods);

(ii) Chapter 3 (Rules of Origin and Origin Procedures);

(iii) Chapter 4 (Customs and Trade Facilitation);

(iv) Chapter 6 (Sanitary and Phytosanitary Measures);

(v) Chapter 7 (Technical Barriers to Trade);

(vi) Chapter 8 (Liberalisation of Investment and Trade in Services);

(vii) Chapter 10 (Digital Trade);

PUBLIC

(viii) Chapter 11 (Government Procurement);

(ix) Chapter 12 (Intellectual Property);

(x) Chapter 13 (Competition);

(xi) Chapter 14 (Energy and Raw Materials);

(xii) Chapter 15 (Trade and Sustainable Growth and Development);

(xiii) Chapter 16 (Sustainable Food Systems); and

(xiv) Chapter 18 (Small and Medium-Sized Enterprises);

(c) any other areas as mutually agreed by the Parties.

PUBLIC

ARTICLE 17.5

Work programme

1. For the purposes of the implementation of this Chapter, the Committee on Trade and Sustainable Growth in its specific configuration for Chapter 17 (Economic Cooperation and Capacity Building) established pursuant to Article 24.4 (hereinafter referred to as "the Committee" for the purposes of this Chapter) shall establish an annual work programme to be used as guidance to formulate proposals for activities of economic cooperation and capacity building.

2. The work programme shall be consistent with the principles set out under Article 17.1 and shall be based on proposals submitted by the Parties for priority areas of cooperation. Such proposals may also include references to forms of cooperation, objectives and technical contact points for their implementation.

ARTICLE 17.6

Resources for economic cooperation and capacity building

1. The Parties shall endeavour to make available the necessary resources for the implementation of this Chapter.

PUBLIC

2. Resources for economic cooperation and capacity building under this Chapter shall be provided as agreed by the Parties.

PUBLIC

ARTICLE 17.7

Institutional arrangements

1. This Article complements and further specifies Article 24.4.

2. The Committee shall be responsible for the effective implementation and operation of this Chapter. The Committee may hold dedicated meetings to carry out its functions under this Chapter.

3. With respect to this Chapter, the functions of the Committee shall include:

(a) establishing the annual work programme referred to in Article 17.5; the first work programme shall be established within one year from the date of the entry into force of this Agreement;

(b) monitoring and reviewing the cooperation activities undertaken under this Chapter, in order to ensure its effective implementation and to support the achievement of its intended objectives;

(c) exchanging information on all relevant activities pertaining to this Chapter; and

(d) discussing any matter arising under this Chapter.

PUBLIC

ARTICLE 17.8

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Chapter.

CHAPTER 18

SMALL AND MEDIUM-SIZED ENTERPRISES

ARTICLE 18.1

General principles

1. The Parties recognise that SMEs contribute significantly to trade, economic growth, employment and innovation. The Parties seek to support the growth and development of SMEs by enhancing their ability to participate in and benefit from the opportunities created by this Agreement.

2. The Parties recognise the importance of access to trade-specific information and transparency disciplines to facilitate the inclusion of SMEs in international trade. They also recognise that in addition to the provisions of this Chapter, there are other provisions of this Agreement that seek to enhance cooperation between the Parties on SME issues or that otherwise may be of particular benefit to SMEs. Such cooperation activities shall take place in accordance with the provisions of Chapter 17 (Economic Cooperation and Capacity Building).

PUBLIC

ARTICLE 18.2

Information sharing

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

(a) a summary of this Agreement; and

(b) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs of both Parties; and

(ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided for by this Agreement.

2. Each Party shall include links from the website provided for in paragraph 1 to:

(a) the text of this Agreement, including all Annexes thereto, in particular tariff schedules and product-specific rules of origin;

(b) the equivalent website of the other Party; and

(c) the websites of its government authorities and other appropriate entities that the Party considers would provide useful information to persons interested in trading, investing or doing business in that Party.

3. Each Party shall include links from the website provided for in paragraph 1 to websites of its own authorities with information related to the following:

(a) import, export and transit regulations as well as a description of the importation, exportation and transit procedures informing of the practical steps needed and the forms, documents and other information required for importation into, exportation from, or transit through the customs territory of that Party;

(b) regulations and procedures concerning intellectual property rights, including geographical indications;

PUBLIC

(c) technical regulations including, where necessary, obligatory conformity assessment procedures, titles of and references to standards selected for reference in or used in connection with technical regulations, or proposed for such use, as well as links to lists of conformity assessment bodies, in cases where third party conformity assessment is obligatory;

(d) sanitary and phytosanitary measures relating to importation and exportation;

(e) rules on public procurement, a database containing public procurement notices as well as other relevant information concerning public procurement opportunities;

(f) business registration procedures;

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

(h) fees and charges imposed by or for governmental agencies on, or in connection with, importation, exportation or transit;

(i) duty drawback, deferral, or other types of relief that reduce, refund or waive customs duties;

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

(k) other information which the Party considers may be of assistance to SMEs.

PUBLIC

4. Each Party shall include a link from the website provided for in paragraph 1 to a database that is electronically searchable by tariff nomenclature code and that includes the following information with respect to access to its market:

(a) rates of customs duties and quotas including most-favoured-nation, rates concerning non-most-favoured-nation countries and preferential rates and tariff rate quotas;

(b) excise duties;

(c) taxes (including value added tax, income tax on imports or sales tax on luxury goods);

(d) rules of origin;

(e) other tariff measures;

(f) information needed for import procedures; and

(g) information related to non-tariff measures or regulations.

5. Each Party shall regularly, or when requested by the other Party, update the information and links referred to in paragraphs 1 to 4 to ensure that they are up-to-date and accurate.

PUBLIC

6. Each Party shall ensure that the information set out in this Article is presented in a manner that is easy to use for SMEs. Each Party shall endeavour to make the information available in English.

7. A Party shall not apply a fee to any person of either Party for access to the information provided pursuant to paragraphs 1 to 4.

PUBLIC

ARTICLE 18.3

SME Contact Points

1. Each Party shall, upon the entry into force of this Agreement, designate one or more contact points for the implementation of this Chapter (hereinafter referred to as "SME Contact Points") and notify the other Party of the contact details of that SME Contact Point. Each Party shall promptly notify the other Party of any change of those contact details.

2. The SME Contact Points shall:

(a) ensure that the needs of SMEs are taken into account in the implementation of this Agreement so that SMEs of both Parties can take advantage of new opportunities under this Agreement;

(b) consider ways to strengthen the cooperation on matters of relevance to SMEs between the Parties to increase trade and investment opportunities for SMEs;

(c) identify ways and exchange information for Union and Indonesian SMEs to take advantage of new opportunities under this Agreement;

(d) monitor and ensure that the information referred to in Article 18.2 is up-to-date and relevant for SMEs;

(e) examine any matter relevant to SMEs in connection with the implementation of this Agreement, including:

(i) exchanging information to assist the Trade Committee in its task to monitor and implement the SMEs-related aspects of this Agreement;

(ii) assisting and participating as appropriate in the work of other committees, contact points and working groups, including those dealing with the provisions on regulatory cooperation, regulatory coherence and non-tariff issues established by this Agreement, in identifying and considering matters of interest to SMEs in order to improve the ability of SMEs to engage in trade and investment between the Parties;

(f) report periodically on their activities including possible suggestions, jointly or individually, to the Trade Committee for its consideration;

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(g) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree; and

(h) meet as mutually agreed, and if appropriate once a year, and shall carry out their work through the communication channels decided by the Parties, which may include electronic mail, videoconference, or other means.

3. Each SME Contact Point may suggest additional information that the other Party may include in its websites in order to be maintained in accordance with Article 18.2.

4. SME Contact Points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their work in accordance with this Chapter.

ARTICLE 18.4

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Chapter.

PUBLIC

CHAPTER 19

GOOD REGULATORY PRACTICES

PUBLIC

ARTICLE 19.1

General principles

1. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles, including the precautionary principle, underlying its regulatory system.

2. Nothing in this Chapter shall be construed as requiring a Party to:

(a) deviate from domestic procedures for preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve any particular regulatory outcome.

3. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States.

4. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the provinces, regencies and municipalities of Indonesia.

PUBLIC

ARTICLE 19.2

Definitions

For the purposes of this Chapter:

(a) "regulatory authority" means:

(i) for the Union: the European Commission; and

(ii) for Indonesia: the Central Government of Indonesia; and

(b) "regulatory measures" means:

(i) for the Union:

(A) regulations and directives, as provided in Article 288 of the TFEU; and

(B) implementing and delegated acts, as provided in Articles 290 and 291 of the TFEU, respectively;

(ii) for Indonesia:

(A) laws;

(B) government regulations; and

(C) presidential regulations and ministerial regulations to the extent that the laws provide an empowerment for such measures.

PUBLIC

ARTICLE 19.3

Scope

This Chapter shall apply to regulatory measures by regulatory authorities in respect of any matter covered by this Agreement.

ARTICLE 19.4

Internal coordination of regulatory development

Each Party shall maintain internal coordination processes or mechanisms with respect to regulatory measures that its regulatory authorities are preparing. Those processes or mechanisms should seek, *inter alia*, to:

(a) foster good regulatory practices, including those set forth in this Chapter;

(b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;

(c) ensure compliance with international trade and investment obligations; and

(d) promote consideration of the impacts of the regulatory measures under preparation, including those on SMEs.

PUBLIC

ARTICLE 19.5

Regulatory processes and mechanisms

Each Party shall make publicly available descriptions of the processes and mechanisms used by its regulatory authority to prepare, evaluate or review regulatory measures. Those descriptions shall refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

PUBLIC

ARTICLE 19.6

Early information on planned regulatory measures

1. Each Party shall make publicly available at least on an annual basis a list of planned major regulatory measures that its regulatory authorities reasonably expect to adopt within a year.

2. With respect to each major regulatory measure included in the list referred to in paragraph 1, each Party should make publicly available, as early as possible:

(a) a brief description of its scope and objectives; and

(b) as appropriate, the estimated timing for its adoption, including opportunities for public consultations.

PUBLIC

ARTICLE 19.7

Public consultations

1. When preparing a major regulatory measure, each Party shall, in accordance with its respective rules and procedures:

(a) publish either the draft regulatory measures or consultation documents providing sufficient details about regulatory measures under preparation to allow any person to assess whether and how the person's interests might be significantly affected;

(b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and

(c) consider the comments submitted, provided that they are relevant for the consultation.

2. The regulatory authority of each Party should make use of electronic means of communication and seek to use and maintain a dedicated and, if available, single electronic portal for the purposes of providing information and receiving comments related to public consultations.

3. The regulatory authority of each Party shall endeavour to make publicly available a summary of the results of the consultations and shall make publicly available any relevant comments received, except to the extent necessary to protect confidential information or withhold personal data or inappropriate content.

PUBLIC

ARTICLE 19.8

Impact assessment

1. The regulatory authority of each Party affirms its intention to carry out, in accordance with its respective rules and procedures, an impact assessment of major regulatory measures it is preparing.

2. When carrying out an impact assessment, the regulatory authority of each Party shall establish and maintain processes and mechanisms that promote the consideration of the following factors:

(a) the need for the regulatory measure, including the nature and the significance of the problem the regulatory measure intends to address;

(b) feasible and appropriate regulatory and, to the extent possible, non-regulatory alternatives including the option of not regulating, if any, that would achieve the Party's public policy objective;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of those alternatives, including on international trade and investment and on SMEs; and

(d) how the options under consideration relate to relevant international standards, if any, including the reason for any divergence, where appropriate.

3. With respect to any impact assessment that a regulatory authority has conducted for a regulatory measure, each Party shall prepare a final report detailing the factors it considered in its assessment and the relevant findings. That report shall, to the extent possible, be made publicly available no later than when the regulatory measure to which it relates is made publicly available.

PUBLIC

ARTICLE 19.9

Retrospective evaluation

1. The regulatory authority of each Party shall maintain processes or mechanisms to promote retrospective evaluations of regulatory measures in effect.

2. When conducting a retrospective evaluation, the regulatory authority of a Party shall consider among others whether there are opportunities to more effectively achieve public policy objectives and reduce unnecessary regulatory burdens, including on SMEs.

3. Each Party shall make publicly available its plans for and the results of a retrospective evaluation.

PUBLIC

ARTICLE 19.10

Regulatory register

Each Party shall ensure that regulatory measures that are in effect are published in a designated register that identifies those regulatory measures by topic and that is publicly available through a freely accessible internet website. The website should allow searches for regulatory measures by citations or by word. Each Party shall periodically update its register.

ARTICLE 19.11

Exchange of information on good regulatory practices

The Parties shall endeavour to exchange information on their good regulatory practices as set out in this Chapter.

ARTICLE 19.12

Non-application of dispute settlement

Chapter 22 (Dispute Settlement) does not apply to this Chapter.

PUBLIC

CHAPTER 20

TRANSPARENCY

ARTICLE 20.1

Objective

1. Recognising the impact which their respective regulatory environments may have on trade and investment between them, the Parties aim to provide a predictable regulatory environment and efficient procedures for economic operators, especially SMEs.

2. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation and better administration of measures of general application.

ARTICLE 20.2

Definitions

For the purposes of this Chapter:

(a) "administrative decision" means a decision or action with a legal effect that applies to a specific person, good or service in an individual case, and covers the failure to take an administrative decision as provided for in the Party's law and legal system; and

(b) "measure of general application" means laws, regulations, judicial decisions, procedures and administrative rulings of general application pertaining to any matter covered by this Agreement.

PUBLIC

ARTICLE 20.3

Publication

PUBLIC

Each Party shall ensure that a measure of general application with respect to any matter covered by this Agreement:

(a) is promptly published via officially designated media, and where feasible by electronic means, or is otherwise made available in such a manner as to enable any person to become acquainted with it;

(b) provides an explanation of the objective of, and rationale for, the measure; and

(c) allows for sufficient time, to the extent possible, between publication and entry into force of laws and regulations, except where it is not possible on grounds of urgency; this point does not apply in relation to judicial decisions and administrative rulings.

ARTICLE 20.4

Enquiries

1. Each Party shall establish or maintain appropriate mechanisms, within its available resources, for responding to enquiries from any person regarding any laws or regulations, with respect to any matter covered by this Agreement.

2. On request of a Party, the other Party shall promptly, to the extent practicable, provide information and respond to questions pertaining to any law or regulation whether in force or planned, with respect to any matter covered by this Agreement, unless a specific mechanism is established under another Chapter of this Agreement.

ARTICLE 20.5

Administration of measures of general application

1. Each Party shall administer all measures of general application with respect to any matter covered by this Agreement in an objective, impartial and reasonable manner, taking into account its laws and regulations.

PUBLIC

2. Each Party, in applying such measures to particular persons, goods or services of the other Party in specific cases shall:

(a) endeavour to provide persons who are directly affected by administrative proceedings, with reasonable notice, in accordance with its laws and regulations, when proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in controversy; and

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings and the public interest permit.

ARTICLE 20.6

Review and appeal

1. Each Party shall, in accordance with its laws and regulations, establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative decisions with respect to any matter covered by this Agreement. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory and impartial manner by its tribunals. Those tribunals shall be impartial and independent of the authority entrusted with administrative enforcement and shall not have any interest in the outcome of the matter.

PUBLIC

2. Each Party shall ensure that the parties to the proceedings referred to in paragraph 1 are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. Each Party shall ensure that the decision referred to in point (b) of paragraph 2 shall, subject to appeal or further review as provided for in its law, be implemented by the authority entrusted with administrative enforcement powers.

ARTICLE 20.7

Relation to other Chapters

The provisions set out in this Chapter supplement the specific rules set out in other Chapters of this Agreement.

PUBLIC

CHAPTER 21

BILATERAL DIALOGUE MECHANISM

PUBLIC

ARTICLE 21.1

Scope, objective and principles

1. The Parties aim to enhance their cooperation and dialogue on matters of interest in their trade and investment relations, with a view to achieving shared goals in furthering their economic development and to maximising the use of opportunities for bilateral engagement, including through deliberations aiming to reach consensus, under this Agreement in order to facilitate bilateral trade and investment in a mutually beneficial way.

2. For the purposes of paragraph 1, the bilateral dialogue mechanism is established, to enhance transparency, predictability, and cooperation on each Party's regulatory environments, building on the objectives and principles in Chapter 19 (Good Regulatory Practices).

3. The dialogue shall not duplicate other means of discussion between the Parties, including the exchange of information and technical consultations established in other Chapters of this Agreement. The Parties may jointly select any such means to address any matters of interest in their trade and investment relations.

ARTICLE 21.2

Exchange of information

1. A Party may, through the CEPA contact points as established pursuant to Article 24.6, submit a request to the other Party, for information[1] on that other Party's existing or future measures which it considers relevant for bilateral trade or investment relations between the Parties. The Party submitting that request shall include therein substantiated reasoning that presents its underlying trade- or investment-related considerations.

2. Within 15 days[2] of the receipt of a request pursuant to paragraph 1, unless otherwise agreed by the Parties, the requested Party shall respond to the request as appropriate. The Parties may engage in an exchange of information on that basis.

3. An exchange of information pursuant to paragraph 2 shall be carried out with a view to seeking a common understanding on the measure or measures referred to in the request. It may be carried out in person, in writing including through the submission of written questions and responses, or by any other means as agreed by the Parties. Unless otherwise agreed by the Parties, this exchange of information shall not exceed 30 days from the date of receipt of the response provided by the requested Party.

[1] For greater certainty, nothing in this paragraph shall oblige a Party to disclose information, drafts or documents that it has classified as confidential pursuant to its laws and regulations.

[2] For the purposes of this Chapter, the term "days" refers to working days.

ARTICLE 21.3

Follow-up discussions

1. If an exchange of information pursuant to Article 21.2 has been carried out and the requesting Party as referred to in Article 21.2(1) has concerns that the measure or measures discussed thereunder may unduly restrict bilateral trade or investment, it may follow up on the exchange of information by submitting a proposal for a dialogue to seek a mutually acceptable outcome.

2. A proposal submitted for a dialogue pursuant to paragraph 1 shall indicate the matter of interest and the trade- or investment-related concerns and may include proposed solutions.

3. The submission of a proposal pursuant to paragraph 1 is without prejudice to the right of the Parties to hold further exchanges of information, seek or provide additional clarifications on the measure or measures concerned, or modify proposed solutions as applicable.

ARTICLE 21.4

Procedural elements

1. Following the submission of a proposal pursuant to Article 21.3, the Parties shall make every effort to reach a mutually acceptable outcome, taking into account the elements specified in Article 21.3(2) and, where applicable, Article 21.3(3).

PUBLIC

2. The Parties shall enter into the dialogue pursuant to Article 21.3(1) in good faith, in person or by any other means of communication, without undue delay and within a timeframe agreed by the Parties.

3. If the dialogue is held in person, it shall take place in the Union or Indonesia alternately, unless otherwise agreed.

4. The dialogue shall be conducted by representatives of the Parties and co-chaired by a representative of each Party.

5. The dialogue shall be under the purview of the institutional body of this Agreement responsible for the subject matter of the measure or measures under discussion and in accordance with that body's relevant procedures, unless otherwise agreed by the Parties. If the measure or measures under discussion do not fall within the remit of any of the institutional bodies of this Agreement, the dialogue shall be conducted in accordance with the relevant procedures of this Chapter.

6. The Parties may agree to invite their relevant respective stakeholders, including those participating in the domestic advisory groups established pursuant to Article 24.7, to meetings held during the dialogue.

7. The Parties may agree to modify the timeframe, place and composition of representatives at any time during the dialogue.

PUBLIC

8. The Parties shall consider any proposed solutions, in particular those that would support the objectives of this Agreement, including the facilitation of bilateral trade and its implementation, and shall strive to reach a mutually acceptable outcome as referred to in Article 21.3(1).

9. The mutually acceptable outcome may take the form of a recommendation to the Trade Committee, which may include relevant cooperation activities under this Agreement or other forms of implementation, or any other form the Parties may agree upon.

PUBLIC

ARTICLE 21.5

Other provisions

1. The use of the dialogue with respect to a measure is without prejudice as to whether that measure is consistent with this Agreement.

2. This Chapter is without prejudice to the application of Chapter 22 (Dispute Settlement).

3. A Party shall use any information provided by the other Party under this Chapter pursuant to Articles 21.2 and 21.3 exclusively for the purposes of this dialogue.

4. For the purposes of this Chapter, each Party's contact points shall be the CEPA contact points established pursuant to Article 24.6.

CHAPTER 22

DISPUTE SETTLEMENT

PUBLIC

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 22.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 22.2

Scope

1. This Chapter shall apply to any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions").[1]

2. The covered provisions shall include all provisions of this Agreement with the exception of: Sections A and B of Chapter 5 (Trade Remedies), Sections A and B of Chapter 13 (Competition), Chapter 16 (Sustainable Food Systems), Chapter 17 (Economic Cooperation and Capacity Building), Chapter 18 (Small and Medium-Sized Enterprises) and Chapter 19 (Good Regulatory Practices).

ARTICLE 22.3

Definitions

For the purposes of this Chapter and Annex 22-A (Rules of Procedure) and Annex 22-B (Code of Conduct for Panellists and Mediators):

(a) "administrative staff" means individuals, other than assistants, under the direction and control of a panellist;

[1] For greater certainty, non-violation complaints shall not be permitted under this Agreement.

(b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;

(c) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;

(d) "candidate" means an individual whose name is on the list of panellists referred to in Article 22.7 and who is under consideration for selection as a panellist in accordance with Article 22.6;

(e) "complaining Party" means any Party that requests the establishment of a panel pursuant to Article 22.5;

(g) "mediator" means an individual who has been selected as mediator in accordance with Article 22.29;

(h) "panel" means a panel established pursuant to Article 22.6;

(i) "panellist" means a member of a panel;

(j) "Party complained against" means the Party that is alleged to be in violation of a covered provision; and

PUBLIC

(k) "representative of a Party" means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

PUBLIC

SECTION B

CONSULTATIONS

ARTICLE 22.4

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 22.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request, including electronically, delivered to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to that request promptly, but no later than 10 days after the date of its receipt. Unless the Parties agree otherwise, consultations shall be held within 30 days after the date of receipt of that request and take place in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 60 days after the date of receipt of the request, or within 90 days after that date if the dispute concerns Chapter 15 (Trade and Sustainable Growth and Development), unless the Parties agree to continue consultations.

4. Consultations on matters which the Party seeking consultations considers to be of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 20 days after the date of receipt of the request. The consultations shall be deemed concluded within those 20 days, unless the Parties agree to continue consultations.

5. During consultations each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could affect the application of this Agreement. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter subject to the consultations.

PUBLIC

6. If the dispute concerns provisions of Chapter 15 (Trade and Sustainable Growth and Development) which relate to multilateral agreements or instruments referred to in that Chapter, the Parties shall take into account information from the ILO or from relevant organisations or bodies established under MEAs in order to promote coherence between the work of the Parties and that of such organisations or bodies. Where relevant, the Parties shall seek advice from such organisations or bodies, or from any other expert or body they deem appropriate. Each Party may also seek, if appropriate, the views of the domestic advisory groups established pursuant to Article 24.7 or any other expert advice.

7. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and are without prejudice to the rights of either Party in any further proceedings.

PUBLIC

SECTION C

PANEL PROCEDURES

PUBLIC

ARTICLE 22.5

Initiation of panel procedures

1. The Party that sought consultations pursuant to Article 22.4 may request the establishment of a panel if:

(a) the Party to which the request is made pursuant to Article 22.4(3) does not respond to the request for consultations within 10 days after the date of its receipt;

(b) the consultations are not held within the time periods set out in Article 22.4(3) or (4) respectively;

(c) the Parties agree not to have consultations; or

(d) the consultations have been concluded and no mutually agreed solution has been reached.

2. The request for the establishment of a panel shall be made by means of a written request, including electronically, delivered to the other Party. The complaining Party shall identify the measure at issue in its request and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. If a request is made pursuant to paragraph 1, a panel shall be established in accordance with Article 22.6.

4. The Trade Committee may decide, if it deems necessary and appropriate, to entrust an external body with assisting panels under this Chapter, including providing administrative and legal support.[1]

ARTICLE 22.6

Establishment of a panel

1. A panel shall consist of three panellists.

2. Within 10 days after the date of receipt by the Party complained against of the written request, including electronically, for the establishment of a panel, the Parties shall consult with a view to agreeing on the composition of the panel.

[1] This shall cover the provision of research assistance and expertise for panellists on legal questions throughout the dispute settlement process.

3. If the Parties do not agree on the composition of the panel within the time period set out in paragraph 2, each Party shall, within five days after the expiry of the time period set out in paragraph 2, appoint a panellist:

(a) from the sub-list of that Party established pursuant to Article 22.7; or

(b) if the dispute concerns Chapter 15 (Trade and Sustainable Growth and Development), from the sub-list of that Party in the TSD List established pursuant to Article 22.7.

4. If a Party does not appoint a panellist from its sub-list within the time period provided for in paragraph 3, the co-chair of the Trade Committee from the complaining Party shall, within five days after the expiry of that time period, select by lot the panellist from the sub-list of that Party. The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot of the panellist.

5. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, the co-chair of the Trade Committee from the complaining Party shall, within five days after the expiry of that time period, select by lot the chairperson of the panel:

(a) from the sub-list of chairpersons established pursuant to Article 22.7; or

(b) if the dispute concerns Chapter 15 (Trade and Sustainable Growth and Development), from the sub-list of chairpersons in the TSD List established pursuant to Article 22.7.

PUBLIC

The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot of the chairperson of the panel.

6. The panel shall be deemed to be established 15 days after the three selected panellists have accepted their appointment in accordance with Rule 6 of Annex 22-A (Rules of Procedure), unless the Parties agree otherwise.

7. If an individual selected to serve as a panellist is not available or does not accept his or her appointment within the time period set out in Rule 6 of Annex 22-A (Rules of Procedure), a new individual shall be selected in accordance with the same selection method used for the selection of the individual who was not available or did not accept the appointment.

8. If any of the lists provided for in Article 22.7 have not been established or if a sub-list does not contain any available individual at the time a selection by lot is to be made pursuant to paragraphs 4 or 5, the panellists shall be drawn by lot from the individuals who have been formally proposed by one Party or both Parties in accordance with Annex 22-A (Rules of Procedure) within five days after the expiry of the time period set out in paragraph 2 or after the confirmation that no individual is available, as the case may be.

PUBLIC

ARTICLE 22.7

Lists of panellists

1. The Trade Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a decision to establish:

(a) a list of at least 15 individuals who are willing and able to serve as panellists; and

(b) a separate list of 15 individuals who are willing and able to serve as panellists in disputes under Chapter 15 (Trade and Sustainable Growth and Development) (hereinafter referred to as "TSD List").

2. Each of the lists referred to in paragraph 1 shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the Union;

(b) one sub-list of individuals established on the basis of proposals by Indonesia; and

(c) one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson to a panel.

3. Each sub-list shall include at least five individuals. The Trade Committee shall ensure that each sub-list is always maintained at this minimum number of individuals.

PUBLIC

4. The Trade Committee may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 22.6.

PUBLIC

ARTICLE 22.8

Requirements for panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade and other matters covered by this Agreement;

(b) be independent of, and not be affiliated with[1] or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with Annex 22-B (Code of Conduct for Panellists and Mediators).

2. The chairperson shall also have experience in dispute settlement procedures.

[1] For greater certainty, the fact that a person receives an income from the government of a Party, was formerly employed by the government of a Party or has a family relationship with a government official of a Party is not in itself a reason to be considered as being affiliated with that Party.

3. By way of derogation from point (a) of paragraph 1, and paragraph 2, each panellist on the TSD List shall have specialised knowledge of, or expertise in, labour or environmental law, issues addressed in Chapter 15 (Trade and Sustainable Growth and Development) or the resolution of disputes arising under international agreements.

4. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in point (a) of paragraph 1.

PUBLIC

ARTICLE 22.9

Functions of the panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of fact, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 22.10

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of the Comprehensive Economic Partnership Agreement between the European Union and the Republic of Indonesia (hereinafter "the Agreement"), cited by the Parties, the matter referred to in the request for the establishment of the panel and to make findings on the conformity of the measure at issue with the provisions referred to in Article 22.2 of the Agreement and to deliver a report in accordance with Articles 22.12 and 22.13 of the Agreement.".

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

PUBLIC

ARTICLE 22.11

Decision on urgency

1. If a Party so requests, the panel shall decide, within 10 days after its establishment, whether the dispute concerns matters of urgency.

2. If the panel decides that the dispute concerns matters of urgency, it shall, after consulting the Parties, shorten the applicable time periods set out in this Section, except for the time periods set out in Article 22.6 and Article 22.10.

ARTICLE 22.12

Interim report

1. The panel shall deliver an interim report to the Parties, to the extent practicable, within 90 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, including electronically, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel should, under no circumstances, deliver its interim report later than 120 days after the date of establishment of that panel. If the complaining Party chooses to deliver a second written submission pursuant to Rule 11 of Annex 22-A (Rules of Procedure), the time periods set out in this paragraph shall be extended by 30 days.

PUBLIC

2. Each Party may deliver to the panel a written request, including electronically, to review precise aspects of the interim report within 10 days after its receipt. A Party may comment on the other Party's request within six days after the receipt of that request.

PUBLIC

ARTICLE 22.13

Final report

1. The panel shall deliver its final report to the Parties, to the extent practicable, within 120 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, including electronically, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel should, under no circumstances, deliver its final report later than 150 days after the date of establishment of that panel. If the complaining Party chooses to deliver a second written submission pursuant to Rule 11 of Annex 22-A (Rules of Procedure), the time periods set out in this paragraph shall be extended by 30 days.

2. The final report shall include a discussion of any written request, including electronically, made by a Party on the interim report, and clearly address the comments of the Parties.

ARTICLE 22.14

Compliance measures

1. The Party complained against shall take any measure necessary to comply promptly with the findings and conclusions in the final report in order to bring itself in compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after the receipt of the final report, deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take to comply.

3. In addition, if the dispute concerns Chapter 15 (Trade and Sustainable Growth and Development):

(a) the Party complained against shall, no later than 30 days after the date of delivery of the final report, inform its domestic advisory groups established pursuant to Article 24.7 of the compliance measures it has taken or envisages to take; and

PUBLIC

(b) the Committee on Trade and Sustainable Growth in its specific configuration for Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil shall monitor the implementation of the compliance measures. The domestic advisory groups established pursuant to Article 24.7 may submit observations to the Committee on Trade and Sustainable Growth in its specific configuration for Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil in that regard.

PUBLIC

ARTICLE 22.15

Reasonable period of time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after the receipt of the final report, deliver a notification to the complaining Party of the length of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the final report.

2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, at the earliest 20 days after the receipt of the notification referred to in paragraph 1, request in writing, including electronically, the original panel to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 30 days after the date of receipt of the request.

3. The Party complained against shall deliver a written notification, including electronically, of its progress in complying with the final report to the complaining Party at least 30 days before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

PUBLIC

ARTICLE 22.16

Compliance review

1. The Party complained against shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a written request, including electronically, to the original panel to decide on the matter. That request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 46 days after the date of receipt of the request.

ARTICLE 22.17

Temporary remedies

1. The Party complained against shall, on request of, and after consultations with, the complaining Party, present an offer for temporary compensation if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report;

(b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 22.14 or before the date of expiry of the reasonable period of time;

(c) the panel finds that no measure taken to comply exists; or

(d) the panel finds that the measure taken to comply is inconsistent with the covered provisions.

2. If the dispute concerns Chapter 15 (Trade and Sustainable Growth and Development), this Article applies if:

(a) any of the circumstances set out in points (a), (b) or (c) of paragraph 1 arise and the final report pursuant to Article 22.13 found a violation of the obligation referred to in Article 15.5(4) or of the obligation referred to in Article 15.8(3); or

PUBLIC

(b) the circumstances set out in point (d) of paragraph 1 arise and the decision of the compliance panel pursuant to Article 22.16 found a violation of the obligation referred to in Article 15.5(4) or of the obligation referred to in Article 15.8(3).

3. In any of the circumstances set out in points (a) to (d) of paragraph 1 and points (a) and (b) of paragraph 2, the complaining Party may deliver a written notification, including electronically, to the Party complained against that it intends to suspend the application of obligations under the covered provisions if:

(a) the complaining Party decides not to make a request pursuant to paragraphs 1 or 2; or

(b) the Parties do not agree on the temporary compensation within 30 days after the expiry of the reasonable period of time or the delivery of the panel decision pursuant to Article 22.16 when a request pursuant to paragraphs 1 is made.

The notification shall specify the level of intended suspension of obligations.

4. The complaining Party may suspend the obligations at the earliest 20 days after the date of receipt of the notification referred to in paragraph 3, unless the Party complained against made a request pursuant to paragraph 6.

5. The suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

PUBLIC

6. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request, including electronically, to the original panel before the expiry of the 20-day period set out in paragraph 4 to decide on the matter. The panel shall deliver its decision on the level of the suspension of obligations to the Parties within 30 days after the date of the request. The obligations shall not be suspended until the panel has delivered its decision. The suspension of obligations shall be consistent with that decision.

7. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 22.33;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

PUBLIC

ARTICLE 22.18

Review of any measure taken to comply after the adoption of temporary remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases pursuant to paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the date of receipt of the notification. In cases where compensation has been applied, and with the exception of cases pursuant to paragraph 2, the Party complained against may terminate the application of such compensation within 30 days from the date of receipt of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days after the date of receipt of the notification referred to in paragraph 1, the complaining Party shall deliver a written request, including electronically, to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 46 days after the date of receipt of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. When relevant, the complaining Party shall adjust the level of suspension of obligations or of compensation in light of the panel decision.

PUBLIC

3. If the Party complained against considers that the level of suspension implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request, including electronically, to the original panel to decide on the matter.

PUBLIC

ARTICLE 22.19

Replacement of panellists

If during a dispute settlement procedure, a panellist is unable to participate, withdraws or needs to be replaced because that panellist does not comply with the requirements set out in Annex 22-B (Code of Conduct for Panellists and Mediators), the procedure provided for in Article 22.6 applies. The time period for the delivery of the report or decision of the panel shall be extended for the time necessary for the appointment of the new panellist.

ARTICLE 22.20

Rules of procedure for dispute settlement

Panel procedures shall be governed by this Chapter and Annex 22-A (Rules of Procedure).

ARTICLE 22.21

Suspension and termination

1. On request of both Parties or of the complaining Party, the panel shall suspend its work at any time for a period agreed by the Parties which does not exceed 12 consecutive months.

2. The panel shall resume its work before the expiry of the suspension period at the written request, including electronically, of both Parties or of the complaining Party, or at the expiry of the suspension period at the written request, including electronically, of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the panel's work at the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

3. If the work of the panel is suspended, the relevant time periods set out in this Section shall be extended by the same period of time for which the work of the panel was suspended.

PUBLIC

ARTICLE 22.22

Receipt of information

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. On request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. If the dispute concerns provisions of Chapter 15 (Trade and Sustainable Growth and Development) which relate to compliance with multilateral agreements and instruments referred to in Chapter 15 (Trade and Sustainable Growth and Development), any information or expert opinion requested by the panel should include information and advice from the ILO or from relevant bodies or organisations established under MEAs.

4. The panel shall consider *amicus curiae* submissions from natural persons of a Party or juridical persons established in a Party in accordance with Annex 22-A (Rules of Procedure).

5. Any information or expert opinion obtained by the panel pursuant to this Article shall be disclosed to the Parties and the Parties may provide comments thereon.

PUBLIC

ARTICLE 22.23

Rules of interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties.

2. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

3. All authentic language versions of this Agreement shall be equally authentic and have equal legal value. In case of divergences in interpretation between authentic language versions, the interpretation shall be based on the text serving as the common basis for the finalisation of the Agreement. This paragraph applies to all provisions in this Agreement including point (e) of Article 24.2(2), and the other provisions which are excluded from the scope of application of this Chapter pursuant to Article 22.2(2).

ARTICLE 22.24

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If this is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

PUBLIC

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties.

3. Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement. They shall not create any rights or obligations with respect to natural or juridical persons.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Annex 22-A (Rules of Procedure).

PUBLIC

ARTICLE 22.25

Choice of forum

1. If a dispute arises regarding a particular measure alleged to breach a covered provision and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has selected the forum and initiated dispute settlement procedures under this Section or under another international agreement, that Party shall not initiate dispute settlement procedures under any other agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel in accordance with Article 22.5;

(b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel in accordance with Article 6 of the DSU; and

(c) dispute settlement procedures under any other international agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Section.

PUBLIC

SECTION D

MEDIATION MECHANISM

PUBLIC

ARTICLE 22.26

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution to a dispute through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 22.27

Request for information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request, including electronically, for information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such a request is made shall, within 21 days after the date of receipt of the request, deliver a written response, including electronically, containing its comments on the requested information.

2. If the responding Party considers that it will not be able to deliver a response within 21 days after the date of receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

3. A Party is normally expected to avail itself of this Article before the initiation of the mediation procedure.

PUBLIC

ARTICLE 22.28

Initiation of the mediation procedure

1. A Party may at any time request to enter into a mediation procedure with respect to any measure by a Party adversely affecting trade or investment between the Parties.

2. The request shall be made by means of a written request, including electronically, delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

(a) identify the specific measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator.

4. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection, including electronically, to the requesting Party within 10 days after its receipt. Otherwise, the request shall be regarded as rejected.

PUBLIC

ARTICLE 22.29

Selection of the mediator

1. The Parties shall endeavour to agree on a mediator within 10 days after the initiation of the mediation procedure.

2. If the Parties are unable to agree on the mediator within the time period laid down in paragraph 1, either Party may request the co-chair of the Trade Committee from the complaining Party to select the mediator by lot, within five days after the date of the request, from the sub-list of chairpersons established pursuant to Article 22.7. The co-chair of the Trade Committee from the complaining Party may delegate such selection by lot of the mediator.

3. Should the sub-list of chairpersons referred to in Article 22.7 not be established at the time a request is made pursuant to Article 22.28, the mediator shall be drawn by lot from the individuals formally proposed by one or both Parties for that sub-list.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with Annex 22-B (Code of Conduct for Panellists and Mediators).

PUBLIC

ARTICLE 22.30

Rules of the mediation procedure

1. Within 10 days after the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular of the operation of the measure at issue and its possible adverse effects on trade or investment. Within 20 days after the receipt of this description, the other Party may deliver written comments on this description. Either Party may include any information that it deems relevant in its description or comments.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on trade or investment. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days after the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, in particular if the measure relates to perishable goods or seasonal goods or services.

6. The mutually agreed solution may be adopted by means of a decision of the Trade Committee. Either Party may make the solution subject to the completion of any necessary internal procedures.

PUBLIC

7. On request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

(a) a brief summary of the measure at issue;

(b) the procedures followed; and

(c) if applicable, any mutually agreed solution reached, including possible interim solutions.

8. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

9. The mediation procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

(b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts to mediate would be to no avail, on the date of that declaration; or

PUBLIC

(d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

PUBLIC

ARTICLE 22.31

Confidentiality

Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. A Party may disclose to the public the fact that mediation is taking place.

ARTICLE 22.32

Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C or under dispute settlement procedures under any other agreement.

2. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Agreement or under any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered pursuant to Article 22.30(2);

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, an individual shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which that individual has served as a mediator.

PUBLIC

SECTION E

COMMON PROVISIONS

PUBLIC

ARTICLE 22.33

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 22.2.

2. If a mutually agreed solution is reached during the panel or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, respectively. Upon such notification, the panel or the mediation procedure shall be terminated.

3. Each Party shall take any measure necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party in writing, including electronically, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 22.34

Transparency

PUBLIC

1. Each Party shall promptly make public:

(a) a request for consultations pursuant to Article 22.4(2);

(b) a request to establish a panel pursuant to Article 22.5(2);

(c) the date of establishment of a panel in accordance with Article 22.6(6), the time limit for *amicus curiae* submissions determined by the panel pursuant to Rule 38 of Annex 22-A (Rules of Procedure) and the working language for the panel procedure determined in accordance with Rule 42 of Annex 22-A (Rules of Procedure);

(d) its submissions in the panel procedure, or a Party can also decide otherwise and make public a summary of its submissions within a short period of time after the issuance of the panel report;

(e) a mutually agreed solution reached pursuant to Article 22.30(6) or Article 22.33, unless the Parties agree otherwise and subject to the protection of confidential information; and

(f) the final reports and decisions of the panel.

2. Any hearing of the panel shall be closed to the public for the duration of any discussion of confidential information. Otherwise, the hearing shall be open to the public, unless the Parties to the dispute agree otherwise.

3. Natural persons of a Party or juridical persons established in a Party may make *amicus curiae* submissions to the panel in accordance with Rule 38 of Annex 22-A (Rules of Procedure).

4. Paragraphs 1 and 2 shall be subject to the protection of confidential information as set out in Rules 33, 34 and 35 of Annex 22-A (Rules of Procedure).

PUBLIC

ARTICLE 22.35

Time periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. A panel established under Section C of this Chapter may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 22.36

Costs

1. Each Party shall bear its own expenses and legal costs derived from the participation in the panel or mediation procedure.

2. Unless the Parties agree otherwise, the Parties shall be jointly liable for the remuneration and expenses of panellists and mediators. The Parties shall share such remuneration and expenses equally. Unless the Parties agree otherwise, the remuneration and expenses of panellists and mediators shall be determined in accordance with Rule 8 of Annex 22-A (Rules of Procedure).

3. Unless the Parties agree otherwise, other expenses associated with the conduct of the proceedings shall be borne in equal parts by the Parties to the dispute.

ARTICLE 22.37

Annexes

The Trade Committee may amend the Annex 22-A (Rules of Procedure) and Annex 22-B (Code of Conduct for Panellists and Mediators), pursuant to Article 24.2.

PUBLIC

CHAPTER 23

EXCEPTIONS

PUBLIC

ARTICLE 23.1

General exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 4 (Customs and Trade Facilitation), Section B of Chapter 8 (Liberalisation of Investment and Trade in Services), Chapter 10 (Digital Trade), Section C of Chapter 13 (Competition) and Chapter 14 (Energy and Raw Materials), Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. 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 investment liberalisation or trade in services, nothing in Sections B to E of Chapter 8 (Liberalisation of Investment and Trade in Services), Chapter 10 (Digital Trade), Section C of Chapter 13 (Competition) and Chapter 14 (Energy and Raw Materials) shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security[1] or public morals or to maintain public order[2];

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

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:

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

3. For greater certainty, the Parties understand that:

(a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures, which are necessary to protect human, animal or plant life or health; and

PUBLIC

1 For greater certainty, public security may cover measures taken to protect critical public infrastructure (whether publicly or privately owned), including communications, power and water infrastructure, from deliberate attempts intended to disable or degrade such infrastructure.

2 The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

4. For greater certainty, the Parties understand that this Article can only be invoked with respect to measures that are otherwise inconsistent with the provisions of the Chapters or Sections referred to in paragraphs 1 and 2.

PUBLIC

ARTICLE 23.2

Security exceptions

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to 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) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

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

(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 Charter of the United Nations for the purpose of maintaining international peace and security.

PUBLIC

ARTICLE 23.3

Taxation

1. For the purposes of this Article, the following definitions apply:

(a) "residence" means residence for tax purposes; and

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the Union or any of its Member States or Indonesia is party.

A "tax" and a "taxation measure" do not include a customs duty.

2. Each Party retains its right to regulate taxation measures, without prejudice to its rights and obligations under this Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of either Indonesia or the Union or any of its Member States, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that tax convention shall prevail to the extent of the inconsistency.

PUBLIC

4. Articles 2.6, 8.9 and 8.15 shall not apply to an advantage accorded by a Party pursuant to a tax convention. For the avoidance of doubt, nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future tax convention by which the Party is bound.

5. Subject to the requirement that taxation 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 and investment, nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure which:

(a) aims at ensuring the equitable or effective[1] imposition or collection of direct taxes;

[1] 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 investors and 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 the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
(v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and 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 this paragraph and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

(b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or the fiscal legislation of that Party; or

(c) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

PUBLIC

ARTICLE 23.4

Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 22 (Dispute Settlement). In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits information to the Trade Committee or to specialised committees which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

PUBLIC

ARTICLE 23.5

WTO waivers

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the duplicated provision in this Agreement.

CHAPTER 24

INSTITUTIONAL PROVISIONS

ARTICLE 24.1

Trade Committee

1. The Parties hereby establish a Trade Committee comprising representatives of the Parties.

2. The Trade Committee shall meet no later than one year after the entry into force of this Agreement. Thereafter, the Trade Committee shall meet on an annual basis, unless otherwise agreed by the co-chairs of the Trade Committee.

3. The meetings of the Trade Committee shall take place in the Union or Indonesia alternately, unless otherwise agreed by the representatives of the Parties. The Trade Committee may meet in person or by other appropriate means of communication, as agreed by the co-chairs of the Trade Committee.

4. The Trade Committee shall be co-chaired by a representative of Indonesia at ministerial level and the Member of the European Commission responsible for trade, or their respective designees.

PUBLIC

ARTICLE 24.2

Functions of the Trade Committee

1. In order to ensure that this Agreement operates properly and effectively, the Trade Committee shall:

(a) consider ways to further enhance trade and investment between the Parties;

(b) supervise and facilitate the implementation and application of this Agreement;

(c) supervise, guide and coordinate the work of all specialised committees, working groups, and other bodies established under this Agreement, and recommend to those specialised committees, working groups and other bodies any necessary action;

(d) without prejudice to Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade), 9 (Capital Movements, Payments and Transfers), 11 (Government Procurement), 13 (Competition), 15 (Trade and Sustainable Growth and Development), 21 (Bilateral Dialogue Mechanism), 22 (Dispute Settlement) and 25 (Final Provisions), seek appropriate ways and methods of preventing problems that may arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

PUBLIC

(e) consider any other matter of interest relating to an area covered by this Agreement; and

(f) adopt at its first meeting its own rules of procedure.

2. The Trade Committee may:

(a) decide to establish or dissolve specialised committees, including the specific configurations thereof, working groups or other bodies other than those established under this Chapter, and determine their composition, remit and tasks;

(b) allocate or delegate responsibilities to specialised committees, working groups or other bodies under this Agreement;

(c) recommend to the Parties any amendments to this Agreement;

(d) adopt decisions to amend this Agreement in accordance with Article 24.3, in the following cases:

(i) Article 2.6(2);

(ii) the duration of the period referred to in Article 2.14(1);

PUBLIC

(iii) Annex 2-A (Elimination of Customs Duties), including Appendix 2-A-1 (Tariff Schedule of the Union) and Appendix 2-A-2 (Tariff Schedule of Indonesia);

(iv) Annex 2-B (Export Duty Quota Schedule Pursuant to Point (b) of Article 2.6(2));

(v) Chapter 3 (Rules of Origin and Origin Procedures) and Annex 3-A (Introductory Notes to the list in Annex 3-B (Product-specific Rules of Origin)), Annex 3-B (Product-specific Rules of Origin) including its Appendices, Annex 3-C (Text of the Statement on Origin), Annex 3-D (Explanatory Notes), Annex 3-E (On the Principality of Andorra) and Annex 3-F (On the Republic of San Marino) pursuant to point (a)(ii) of Article 3.29(2);

(vi) with respect to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalency and alternative measures as referred to in Article 6.15(7);

(vii) Annex 7-A (List of International Standardising Bodies), paragraph 1 of Annex 7-B (Supplier's Declaration of Conformity - Fields and Modalities) and Annex 7-C (Motor Vehicles and Equipment and Parts Thereof);

(viii) adopt arrangements as an Annex pursuant to point (b) of Article 7.9(4) or Article 7.9(5);

(ix) adopt a Mutual Recognition Arrangement pursuant to Article 8.27(4);

PUBLIC

(x) Annex 11-A (Government Procurement Market Access Schedule of the Union) and Annex 11-B (Government Procurement Market Access Schedule of Indonesia);

(xi) Annex 12-A (Requirements for Laws and Regulations on Geographical Indications), Annex 12-B (Criteria to be Included in the Opposition Procedure) and Annex 12-C (Geographical Indications for Products as Referred to in Article 12.31(3) and (4)) pursuant to Article 12.37;

(xii) Annex 13-A (Specific Rules for Indonesia on State-Owned Enterprises);

(xiii) Annex 22-A (Rules of Procedure) and Annex 22-B (Code of Conduct for Panellists and Mediators);

(xiv) the Protocol on Mutual Administrative Assistance in Customs Matters; and

(xv) any other provision, Annex or Appendix, for which the possibility of such decision is explicitly foreseen in this Agreement;

(e) adopt, through decisions, binding interpretations of the provisions of this Agreement, in accordance with Article 24.3;

PUBLIC

(f) except in relation to this Chapter, until the end of the fourth year following the entry into force of this Agreement, adopt decisions amending this Agreement where such decisions are necessary to correct errors or to address omissions or other deficiencies[1];

(g) adopt any decisions as envisaged in this Agreement, or make recommendations as provided for in Article 24.3; and

(h) communicate on matters related to this Agreement with all interested parties, including business, trade unions and civil society organisations.

3. For the purposes of point (e) of paragraph 2, such interpretations shall enter into force upon the exchange of notifications in accordance with the Parties' respective procedures. They shall be binding on the Parties and all bodies established under this Agreement, including the panels referred to under Chapter 22 (Dispute Settlement).

PUBLIC

[1] For greater certainty, the term "omissions or other deficiencies" refers to ascertainable drafting, clerical, technical, translation omissions or other comparable deficiencies, and does not include any change that substantially modifies the rights or obligations of the Parties.

4. The Trade Committee shall exchange views on topics concerning the implementation of this Agreement with civil society representatives participating in a Civil Society Forum. The Trade Committee shall agree at its first meeting on the operational guidelines for the conduct of the Civil Society Forum. The Civil Society Forum shall meet in conjunction with the meeting of the Trade Committee, unless otherwise agreed by the representatives of the Parties. Representatives of the Parties shall facilitate the organisation of the Civil Society Forum including participation by virtual means. The Civil Society Forum includes members of the domestic advisory groups established pursuant to Article 24.7 and is open to other relevant independent civil society organisations established in the territories of the Parties. Each Party shall promote a balanced representation of interest groups in economic, social and environmental matters with fields of activity and expertise directly relating to the scope of this Agreement, as appropriate. The Parties may, jointly or individually, publish any formal statements made at the Civil Society Forum.

5. The Trade Committee shall regularly report to the Joint Committee established under Article 41 of the Framework Agreement on its activities including those of its specialised committees, where relevant, at the regular meetings of the Joint Committee. The information to be reported may also be provided to the Joint Committee by representatives designated by the Trade Committee or in writing.

PUBLIC

ARTICLE 24.3

Decisions and recommendations of the Trade Committee

1. The Trade Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to adopt decisions as provided for in this Agreement. The decisions adopted by the Trade Committee shall be binding upon the Parties and enter into force after notification in writing of the completion of their respective applicable legal requirements and procedures. Each Party shall take all measures necessary to implement the decisions adopted by the Trade Committee.

2. For the purposes of attaining the objectives of this Agreement, the Trade Committee may make appropriate recommendations in respect of all matters covered by this Agreement.

3. The Trade Committee shall adopt its decisions and make its recommendations by consensus.

ARTICLE 24.4

Specialised committees

1. The following specialised committees are hereby established under the auspices of the Trade Committee:

(a) the Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters;

PUBLIC

(b) the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property; and

(c) the Committee on Trade and Sustainable Growth.

2. Each of the specialised committees referred to in paragraph 1 shall be convened in specific configurations to carry out its tasks, as follows:

(a) the Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters shall meet in specific configurations with regard to:

(i) Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies), 7 (Technical Barriers to Trade);

(ii) Chapter 6 (Sanitary and Phytosanitary Measures); and

(iii) Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation), and 12 (Intellectual Property) for issues related to border enforcement;

(b) the Committee on Services, Investment, Digital Trade, Government Procurement, and Intellectual Property shall meet in a specific configuration with regard to:

(i) Chapters 8 (Liberalisation of Investment and Trade in Services), 10 (Digital Trade), 11 (Government Procurement), and 12 (Intellectual Property); and

PUBLIC

(c) the Committee on Trade and Sustainable Growth shall meet in specific configurations with regard to:

(i) Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil;

(ii) Chapter 17 (Economic Cooperation and Capacity Building); and

(iii) Chapter 16 (Sustainable Food Systems).

3. The composition of the specialised committees in their specific configurations, as well as their remit, tasks and functioning shall be as defined in the relevant Chapters and Protocols of this Agreement or by the Trade Committee pursuant to point (a) of Article 24.2(2).

PUBLIC

4. Unless otherwise provided by this Agreement or if agreed by the representatives of the Parties, the specialised committees shall meet in each specific configuration once a year, or without undue delay at the request of the Trade Committee or of the co-chair of the Trade Committee of either Party. They shall be co-chaired, at an appropriate level, by representatives of the Parties. Each Party shall appoint a co-chair for each specific configuration of each specialised committee, according to its procedures. The meetings shall take place in the Union or in Indonesia alternatively or by any other appropriate means of communication, as agreed by the co-chairs of each specific configuration of the specialised committees. Each specialised committee shall, in each specific configuration, agree on its respective meeting schedule and set its respective agenda. Each specialised committee may decide on its own rules of procedure, in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*. Meetings between the specific configurations under the specialised committees may also take place, as agreed by representatives of the Parties.

5. The specialised committees may make, in each specific configuration, recommendations or submit proposals for decisions to be adopted by the Trade Committee.

6. The specialised committees shall, in each specific configuration, inform the Trade Committee of their respective schedules and agendas sufficiently in advance of their meetings and shall report to the Trade Committee on the results and conclusions of each of those meetings. The creation or existence of a specialised committee shall not prevent a Party from submitting any matter relating to an area covered by this Agreement directly to the Trade Committee.

PUBLIC

7. Each Party shall ensure that when a specialised committee meets in any of its specific configurations, all the competent authorities for each issue on the agenda are represented, as each Party deems appropriate and in accordance with the specific configuration in which the specialised committee is meeting, and that each issue can be discussed at the adequate level of expertise.

PUBLIC

ARTICLE 24.5

Working groups

1. The Working Group on Motor Vehicles and Equipment and Parts Thereof is hereby established, under the supervision of the Committee on Trade in Goods, Customs Matters, and Sanitary and Phytosanitary Matters in its specific configuration for Chapters 2 (National Treatment and Market Access for Goods), 5 (Trade Remedies) and 7 (Technical Barriers to Trade).

2. The working groups shall, under the supervision of the specialised committees in a specific configuration, assist the specialised committees in the performance of their tasks and, in particular, prepare their work and carry out any task assigned to them.

3. The working groups shall comprise of, and be co-chaired by, representatives of each Party.

4. Each working group may decide on its own rules of procedure, in the absence of which, the rules of procedure of the Trade Committee shall apply *mutatis mutandis*. Each working group shall agree on its respective meeting schedule and set its respective agenda by mutual consent.

PUBLIC

ARTICLE 24.6

CEPA contact points

1. Each Party shall designate a "CEPA contact point" to facilitate communications between the Parties on matters pertaining to this Agreement and shall notify the details of its CEPA contact point to the other Party within 30 days after the entry into force of this Agreement.

2. The designated CEPA contact points shall:

(a) unless otherwise provided for in this Agreement, or otherwise agreed by the co-chairs of the Trade Committee, deliver and receive all notifications and information to be provided between the Parties pursuant to this Agreement;

(b) facilitate communications between the Parties on any matter covered by this Agreement, as well as on its implementation;

(c) coordinate preparations for the meetings of the Trade Committee and the specialised committees;

(d) respond to any enquiries received pursuant to relevant provisions in this Agreement; and

(e) maintain an updated list of Chapter specific contact points that follow matters related to the implementation of the relevant Chapters of this Agreement.

PUBLIC

ARTICLE 24.7

Domestic advisory groups

1. Each Party shall create a new or designate an existing domestic advisory group within a year from the date of entry into force of this Agreement, with the task of providing advice, including on its own initiative, on matters concerning the implementation of this Agreement. The composition of each domestic advisory group shall ensure a balanced representation of independent civil society organisations[1], based on a multi-stakeholder approach which includes relevant interest groups in economic, social and environmental matters.

2. Each Party shall convene a meeting with its domestic advisory group at least once a year and consider the advice or recommendations that the group may provide. Each Party may decide on the follow-up to the advice or recommendations by its domestic advisory group. Domestic advisory groups may be convened in different configurations to discuss the implementation of different Chapters or provisions of this Agreement.

[1] Civil society includes non-governmental organisations, business and employers' organisations as well as trade unions.

3. The Parties shall promote public awareness of their respective domestic advisory groups and encourage interaction between them. To that end, each Party shall make publicly available relevant information on the composition of its domestic advisory group and shall exchange information with the other Party on the contact point of its own domestic advisory group.

PUBLIC

CHAPTER 25

FINAL PROVISIONS

ARTICLE 25.1

Amendments

1. The Parties may agree, in writing, to amend this Agreement. Amendments to this Agreement constitute integral parts thereof.

2. Amendments shall enter into force on the first day of the second month, or on a later date as may be agreed by the Parties, following the date on which the Parties exchange written notifications confirming that they have completed their respective applicable legal requirements for the entry into force of such amendments.

3. Notwithstanding paragraph 1, the Trade Committee may, in accordance with the respective applicable legal requirements of the Parties, amend this Agreement, where provided for in point (d) of Article 24.2(2).

PUBLIC

ARTICLE 25.2

Entry into force

1. The Parties shall approve this Agreement in accordance with their respective applicable legal requirements and procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have exchanged written notifications confirming that they have completed their respective applicable legal requirements for the entry into force of this Agreement. Such exchange shall be done only after the Parties have exchanged diplomatic notes confirming the completion of the languages authentication pursuant to Article 25.13(2). The Parties may agree on another date of entry into force of this Agreement.

3. Pending its entry into force, the Parties may provisionally apply this Agreement as from the first day of the first month following the date on which they have notified each other that their respective internal requirements and procedures necessary for provisional application of this Agreement have been completed or on an earlier date thereafter if so agreed by the Parties.

4. Notifications referred to in paragraphs 2 and 3 shall be sent in writing to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of Indonesia, or their respective successors.

5. If pending the entry into force of this Agreement, the Parties decide to provisionally apply it in accordance with paragraph 3, all references in this Agreement to its date of entry into force shall be deemed to refer to the date on which provisional application takes effect.

PUBLIC

ARTICLE 25.3

Duration and termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.

2. A Party may terminate this Agreement by written notification to the other Party. This notification shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of Indonesia, or their respective successors. This termination shall take effect six months after the date of receipt of that notification, unless the Parties agree otherwise.

ARTICLE 25.4

General review

Without prejudice to specific provisions concerning reviews in other Chapters of this Agreement, the Trade Committee shall undertake a general review of the implementation and operation of this Agreement within 10 years of its entry into force, and thereafter at such times as the Trade Committee may agree.

PUBLIC

ARTICLE 25.5

Fulfilment of obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

2. Each Party shall take all general or specific measures required to fulfil their obligations under 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.

3. In cases of special urgency as defined in Article 44(4) of the Framework Agreement, a Party may take appropriate measures with respect to this Agreement. Remaining a party, in good faith, to the Paris Agreement constitutes an essential element of this Agreement pursuant to Article 15.8(3) of this Agreement and a Party may take appropriate measures relating to this Agreement for violations thereof. Those appropriate measures shall be taken in accordance with the procedure set out in Article 44 of the Framework Agreement. In the selection of actions, priority must be given to those which least disturb the functioning of this Agreement.

PUBLIC

ARTICLE 25.6

Persons exercising delegated governmental authority

Unless otherwise provided for in this Agreement, each Party shall ensure that any person, including state owned enterprises, public enterprises, an enterprise granted special rights or privileges or a designated monopoly, that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

ARTICLE 25.7

No direct effect

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the legal systems of the Parties.

2. A Party shall not expressly provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

PUBLIC

ARTICLE 25.8

Relation with other agreements

1. Unless otherwise provided for in this Agreement, the existing agreements between the Member States, the European Community or the Union and Indonesia are not superseded or terminated by this Agreement.

2. This Agreement shall be an integral part of the overall bilateral relations as governed by the Framework Agreement and shall form part of the common institutional framework.

3. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement. For greater certainty, nothing in this Agreement requires a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

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

5. If any of the provisions of the WTO Agreement incorporated into this Agreement is amended, the Parties shall consult with a view to finding a mutually satisfactory solution, where necessary.

PUBLIC

ARTICLE 25.9

References to laws, regulations and other agreements

1. Unless otherwise provided for in this Agreement, any reference in this Agreement to laws or regulations of a Party shall be understood to include amendments thereto.

2. Unless otherwise provided for in this Agreement, where international agreements are referred to, or are incorporated into, this Agreement, in whole or in part, they shall be understood to include amendments thereto, or their successor agreements that enter into force for both Parties on or after the date of signature of this Agreement.

ARTICLE 25.10

Future accessions to the Union

1. The Union shall notify Indonesia of any request made by a country to accede to the Union.

2. During the negotiations between the Union and the country seeking accession, the Union should provide, upon request of Indonesia, and to the extent possible, any relevant information regarding any matter covered by this Agreement.

3. For greater certainty, this Agreement shall apply to trade and investment between the new Member State of the Union and Indonesia from the date of accession of that new Member State to the Union.

4. In order to facilitate the implementation of paragraph 3, the Trade Committee shall examine any effect of the accession to the Union on this Agreement and decide on the necessary amendments to this Agreement, and on any necessary adjustment or transition measures, sufficiently in advance of the date of accession of the new Member State to the Union. Such decision shall take effect on the date of accession of the new Member State to the Union.

5. The Union shall notify Indonesia of the entry into force of any accession to the Union.

ARTICLE 25.11

Territorial application

1. This Agreement shall apply:

(a) with respect to the Union, to the territories in which the Treaty on European Union and the TFEU are applied and under the conditions laid down in those Treaties; and

PUBLIC

(b) with respect to Indonesia, to its territory, which is defined as the land territories, internal waters, archipelagic waters, territorial sea, including the seabed and subsoil thereof, and the airspace over such territories and waters, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction as defined in its laws and in accordance with international law, including UNCLOS.

2. As regards the provisions concerning the tariff treatment of goods, including rules of origin and origin procedures, this Agreement shall also apply with respect to the Union to those areas of the Union customs territory, as defined by Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, not covered by point (a) of paragraph 1 of this Article.

3. References to "territory" in this Agreement shall be understood in accordance with paragraphs 1 and 2, except as otherwise expressly provided.

ARTICLE 25.12

Annexes, appendices and protocols

1. The Annexes, Appendices and Protocols to this Agreement constitute integral parts thereof.

2. Each of the Annexes to this Agreement, including its Appendices, shall form an integral part of the Chapter that refers to that Annex or to which reference is made in that Annex.

PUBLIC

ARTICLE 25.13

Authentic texts

1. This Agreement is drawn up in duplicate and is authentic in the language in which it was negotiated.

2. If requested by either Party within one month after the signature of the Agreement, any of the Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Indonesian language versions shall be authenticated by an exchange of diplomatic notes between the European Union and Indonesia.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

Done at ……, this …… day of …… in the year ……

For the European Union

For the Republic of Indonesia

PUBLIC