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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 October 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 691 final - ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

Delegations will find attached document COM(2018) 691 final - ANNEX 1.

Encl.: COM(2018) 691 final - ANNEX 1

EUROPEAN
COMMISSION

Brussels, 17.10.2018
COM(2018) 691 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

FREE TRADE AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE SOCIALIST REPUBLIC OF VIET NAM

PREAMBLE

The European Union, hereinafter referred to as "the Union",

and

the Socialist Republic of Viet Nam, hereinafter referred to as "Viet Nam",

hereinafter jointly referred to as "the Parties" or individually referred to as "Party",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Partnership and Cooperation Agreement, and their important economic, trade and investment relationship;

DESIRING to further strengthen their economic 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;

RECOGNISING that this Agreement will complement and promote regional economic integration efforts;

DETERMINED to strengthen their economic, trade and investment relationship in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment under this Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements;

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

CONVINCED that this Agreement will create an expanded and secure market for goods and services and a stable and predictable environment for trade and investment, thus enhancing the competitiveness of their firms in global markets;

REAFFIRMING their commitment to the *Charter of the United Nations*, signed in 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 on 10 December 1948;

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

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to mutual trade and investment;

RESOLVED to contribute to the harmonious development and expansion of international trade by removing obstacles to trade through this Agreement and to avoid creating new barriers to trade or investment between the Parties that could reduce the benefits of this Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements and arrangements to which they are party;

DESIRING to promote the competitiveness of their companies by providing them with a predictable legal framework for their trade and investment relations,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

OBJECTIVES AND GENERAL DEFINITIONS

ARTICLE 1.1

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 1.2

Objectives

The objectives of this Agreement are to liberalise and facilitate trade and investment between the Parties in accordance with the provisions of this Agreement.

ARTICLE 1.3

Partnership and Cooperation Agreement

For the purposes of this Agreement "Partnership and Cooperation Agreement" means the *Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part,* signed in Brussels on 27 June 2012.

ARTICLE 1.4

WTO Agreements

For the purposes of this Agreement:

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

(b) "Agreement on Government Procurement" means the *Agreement on Government Procurement* contained in Annex 4 of the WTO Agreement;

(c) "Agreement on Preshipment Inspection" means the *Agreement on Preshipment Inspection* contained in Annex 1A of the WTO Agreement;

(d) "Agreement on Rules of Origin" means the *Agreement on Rules of Origin* contained in Annex 1A of the WTO Agreement;

(e) "Anti-Dumping Agreement" means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* contained in Annex 1A of the WTO Agreement;

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

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

(h) "GATS" means the *General Agreement on Trade in Services* contained in Annex 1B of the WTO Agreement;

(i) "GATT 1994" means the *General Agreement on Tariffs and Trade 1994* contained in Annex 1A of the WTO Agreement;

(j) "Import Licensing Agreement" means the *Agreement on Import Licensing Procedures* contained in Annex 1A of the WTO Agreement;

(k) "Safeguards Agreement" means the *Agreement on Safeguards* contained in Annex 1A of the WTO Agreement;

(l) "SCM Agreement" means the *Agreement on Subsidies and Countervailing Measures* contained in Annex 1A of the WTO Agreement;

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

(n) "TBT Agreement" means the *Agreement on Technical Barriers to Trade* contained in Annex 1A of the WTO Agreement;

(o) "TRIPS Agreement" means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* contained in Annex 1C of the WTO Agreement; and

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

ARTICLE 1.5

General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) "day" means a calendar day;

(b) "domestic" means with regard to legislation, law or laws and regulations for the Union and its Member States and for Viet Nam[1], respectively, legislation, law or laws and regulations at central, regional or local level;

(c) "goods" means products as understood in GATT 1994, unless otherwise provided for in this Agreement;

(d) "Harmonized System" means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto (hereinafter referred to as the "HS");

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

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

(g) "natural person of a Party" means a national of one of the Member States of the Union or of Viet Nam, according to their respective legislation;[2]

(h) "person" means a natural person or a legal person;

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[1] For greater certainty, for Viet Nam the relevant forms of legislation, law or laws and regulation at the central level or local level are provided for in the Law No. 80/2015/QH13 of 22 June 2015 on the Promulgation of Legal Normative Documents.

[2] The term "natural person" includes natural persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of Latvia, to receive a non-citizen's passport (Alien's Passport).

(i) "third country" means a country or territory outside the scope of territorial application of this Agreement as defined in Article 17.24 (Territorial Application);

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

(k) "WIPO" means the World Intellectual Property Organization; and

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

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1

Objective

The Parties shall progressively liberalise trade in goods and improve market access over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement and in conformity with Article XXIV of GATT 1994.

ARTICLE 2.2

Scope

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

ARTICLE 2.3

Definitions

For the purposes of this Chapter:

(a) "agricultural export subsidies" means subsidies as defined in paragraph (e) of Article 1 of the Agreement on Agriculture, including any amendment of that Article;

(b) "agricultural good" means a product listed in Annex 1 to the Agreement on Agriculture;

(c) "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 goods;

(d) "customs duty" includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation, and does not include any:

(i) charge equivalent to an internal tax imposed in accordance with Article 2.4 (National Treatment);

(ii) duty imposed in accordance with Chapter 3 (Trade Remedies);

(iii) duties applied in accordance with Articles VI, XVI and XIX of GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, the Safeguards Agreement, Article 5 of the Agreement on Agriculture and the DSU; and

(iv) fee or other charge imposed in accordance with Article 2.18 (Administrative Fees, Other Charges and Formalities on Imports and Exports);

(e) "export licensing procedures" means administrative procedures[1] used for the operation of export licensing regimes requiring the submission of an application or other documentation, other than that required for customs purposes, to the relevant administrative body as a prior condition for exportation from the territory of the exporting Party;

[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

(f) "import licensing procedures" means administrative procedures[1] used for the operation of import licensing regimes requiring the submission of an application or other documentation, other than that required for customs purposes, to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

(g) "non-automatic export licensing procedures" means export licensing procedures where approval of the application is not granted for all legal and natural persons who fulfil the requirements of the Party concerned for engaging in export operations involving the products subject to export licensing procedures;

(h) "non-automatic import licensing procedures" means import licensing procedures where approval of the application is not granted for all legal and natural persons who fulfil the requirements of the Party concerned for engaging in import operations involving the products subject to import licensing procedures;

(i) "originating" refers to the origin of a good as determined in accordance with the rules of origin set out in Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation);

(j) "performance requirement" means a requirement that:

(i) a given quantity, value or percentage of goods be exported;

[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

(ii) goods of the Party granting an import license be substituted for imported goods;

(iii) a person benefiting from an import license purchase other goods in the territory of the Party granting the import licence, or accord a preference to domestically produced goods;

(iv) a person benefiting from an import licence produce goods in the territory of the Party granting the import licence, with a given quantity, value or percentage of domestic content; or

(v) relates in whatever form to the volume or value of imports, to the volume or value of exports or to the amount of foreign exchange inflows; and

(k) "remanufactured good" means a good classified in HS Chapter 84, 85, 87, 90 or 9402, except those listed in Appendix 2-A-5 (Goods excluded from the Definition of Remanufactured Goods), which:

(i) is entirely or partially comprised of parts obtained from goods that have been used beforehand; and

(ii) has similar performance and working conditions as well as life expectancy compared to the original new good and is given the same warranty as the original new good.

ARTICLE 2.4

National Treatment

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, the obligations contained in Article III of GATT 1994, including its Notes and Supplementary Provisions, are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5

Classification of Goods

The classification of goods in trade between the Parties shall be in accordance with each Party's respective tariff nomenclature in conformity with the HS.

ARTICLE 2.6

Remanufactured Goods

The Parties shall accord to remanufactured goods the same treatment as that accorded to new like goods. A Party may require specific labelling of remanufactured goods in order to prevent deception of consumers. Each Party shall implement this Article within a transitional period of no longer than three years from the date of entry into force of this Agreement.

ARTICLE 2.7

Reduction or Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall reduce or eliminate its customs duties on goods originating in the other Party in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties).

2. For the calculation of the successive reductions under paragraph 1, the base rate for customs duties of each good shall be the one specified in the schedules included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties). The tariff elimination established under Appendix 2-A-2 (Tariff Schedule of Viet Nam) does not apply to used motor-vehicles under HS codes 8702, 8703 and 8704.

3. If a Party reduces an applied most favoured nation customs duty rate below the rate of customs duty applied in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties), the good originating in the other Party shall be eligible for that lower duty rate.

4. Except as otherwise provided in this Agreement, a Party shall not increase any existing customs duty applied in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties), or adopt any new customs duty, on a good originating in the other Party.

5. A Party may unilaterally accelerate the reduction or elimination of customs duties on originating goods of the other Party applied in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties). When a Party considers such an acceleration it shall inform the other Party as early as possible before the new rate of customs duty takes effect. A unilateral acceleration shall not preclude the Party from raising a customs duty to the prevailing rate at each stage of reduction or elimination in accordance with its respective schedule included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties).

6. Upon request of a Party, the Parties shall consult to consider accelerating or broadening the scope of the reduction or elimination of customs duties applied in accordance with their respective schedules included in Appendices 2-A-1 (Tariff Schedule of the Union) and 2-A-2 (Tariff Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties). If the Parties agree to amend this Agreement in order to accelerate or broaden such scope, such agreement shall supersede any duty rate or staging category for such good determined pursuant to their Schedules. Such an amendment shall come into effect in accordance with Article 17.5 (Amendments).

ARTICLE 2.8

Management of Administrative Errors

In the event of an error by the competent authorities in the proper management of the preferential system at export, and in particular in the application of Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation), where this error leads to consequences in terms of import duties, the importing Party may request the Trade Committee established pursuant to Article 17.1 (Trade Committee) to examine the possibilities of adopting appropriate measures with a view to resolving the situation.

ARTICLE 2.9

Specific Measures concerning the Preferential Tariff Treatment

1. The Parties shall cooperate on combating customs violations relating to the preferential tariff treatment granted under this Chapter.

2. For the purpose of paragraph 1, each Party shall offer the other Party administrative cooperation and mutual administrative assistance in customs and related matters as part of the implementation and control of the preferential tariff treatment, which shall include the following obligations:

(a) verifying the originating status of the product or products concerned;

(b) carrying out the subsequent verification of the proof of origin and providing the results of that verification to the other Party; and

(c) granting authorisation to the importing Party to conduct enquiry visits in order to determine the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

3. Where, in accordance with the provisions on administrative cooperation or mutual administrative assistance in customs and related matters referred to in paragraph 2, the importing Party establishes that a proof of origin was unduly issued because the requirements provided for in Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation) were not fulfilled, that Party may deny a preferential tariff treatment to a declarant who claimed it with regard to goods for which the proof of origin was issued in the exporting Party.

4. If the importing Party considers that the denial of preferential tariff treatment for individual consignments referred to in paragraph 3 is insufficient to implement and control the preferential tariff treatment of a given product, that Party may, in accordance with the procedure laid down in paragraph 5, temporarily suspend the relevant preferential tariff treatment of the products concerned in the following cases:

(a) when that Party finds that there has been a systematic customs violation regarding claims of preferential tariff treatment under this Agreement; or

(b) when that Party finds that the exporting Party has systematically failed to comply with the obligations under paragraph 2.

5. The competent authority of the importing Party shall, without undue delay, notify its finding to the competent authority of the exporting Party, provide verifiable information upon which the finding was based and engage in consultations with the competent authority of the exporting Party with a view to achieving a mutually acceptable solution.

6. If the competent authorities have not achieved a mutually acceptable solution after 30 days following the notification referred to in paragraph 5, the importing Party shall, without undue delay, refer the matter to the Trade Committee.

7. If the Trade Committee has failed to agree on an acceptable solution within 60 days following the referral, the importing Party may temporarily suspend the preferential tariff treatment for the products concerned.

The importing Party may apply the temporary suspension of preferential tariff treatment under this paragraph only for a period necessary to protect its financial interests and until the exporting Party provides convincing evidence of its ability to comply with the obligations referred to in paragraph 2 and to provide sufficient control of the fulfilment of those obligations.

The temporary suspension shall not exceed a period of three months. If the conditions that gave rise to the initial suspension persist after the expiry of the three-month period, the importing Party may decide to renew the suspension for another period of three months. Any suspension shall be subject to periodic consultations within the Trade Committee.

8. The importing Party shall publish, in accordance with its internal procedures, notices to importers about any notification and decision concerning the temporary suspension referred to in paragraph 4. The importing Party shall, without undue delay, notify the exporting Party and the Trade Committee.

ARTICLE 2.10

Repaired Goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after the good has been temporarily exported from its territory to the territory of the other Party for repair, regardless of whether such repair could be performed in the territory of the Party from which the good was temporarily exported.

2. Paragraph 1 does not apply to a good imported in bond, into a free trade zone, or in similar status, that is exported for repair and is not re-imported in bond, into a free trade zone, or in similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair.

4. For the purposes of this Article, the term "repair" means any processing operation which is undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of a good to its original function or to ensure its compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair of a good includes restoring and maintenance. It shall not include an operation or process that:

(a) destroys the essential characteristics of the good or creates a new or commercially different good;

(b) transforms an unfinished good into a finished good; or

(c) is used to improve or upgrade the technical performance of a good.

ARTICLE 2.11

Export Duties, Taxes or Other Charges

1. A Party shall not maintain or adopt any duties, taxes, or other charges of any kind imposed on, or in connection with, the exportation of a good to the territory of the other Party that are in excess of those imposed on like goods destined for domestic consumption, other than in accordance with the schedule included in Appendix 2-A-3 (Export Duties Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties).

2. If a Party applies a lower rate of duty, tax or charge on, or in connection with, the exportation of a good and for as long as it is lower than the rate calculated in accordance with the schedule included in Appendix 2-A-3 (Export Duties Schedule of Viet Nam) of Annex 2-A (Reduction or Elimination of Customs Duties), that lower rate shall apply. This paragraph shall not apply to more favourable treatment granted to any other third party pursuant to a preferential trade agreement.

3. At the request of either Party, 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, when a Party has granted more favourable treatment to any other third party pursuant to a preferential trade agreement.

ARTICLE 2.12

Agricultural Export Subsidies

1. In the multilateral context, the Parties share the objective of the parallel elimination and prevention of the reintroduction of all forms of export subsidies and disciplines on all export measures with equivalent effect for agricultural goods. To that end, they shall work together with the aim of enhancing multilateral disciplines on agricultural exporting state enterprises, international food aid and export financing support.

2. Upon the entry into force of this Agreement, the exporting Party shall not introduce or maintain any export subsidies or other measures having equivalent effect on any agricultural good which is subject to the elimination or reduction of customs duties by the importing Party in accordance with Annex 2-A (Reduction or Elimination of Customs Duties) and which is destined for the territory of the importing Party.

ARTICLE 2.13

Administration of Trade Regulations

In accordance with Article X of GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to:

(a) the classification or the valuation of goods for customs purposes;

(b) rates of duty, taxes or other charges;

(c) requirements, restrictions or prohibitions on imports or exports;

(d) the transfer of payments; and

(e) issues affecting sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of goods for customs purposes.

ARTICLE 2.14

Import and Export Restrictions

1. Except as otherwise provided for in this Agreement, 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, in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article XI of GATT 1994, including its Notes and Supplementary Provisions, are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Paragraph 1 prohibits a Party from adopting or maintaining:

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

(b) voluntary export restraints.

3. Paragraphs 1 and 2 do not apply to the goods listed in Appendix 2-A-4 (Specific Measures by Viet Nam governing the Importation and Exportation of Goods). Any amendment of Viet Nam's laws and regulations that reduces the scope of the goods listed in Appendix 2-A-4 (Specific Measures by Viet Nam governing the Importation and Exportation of Goods) shall automatically apply under this Agreement. Any preference accorded by Viet Nam regarding the scope of the goods listed in Appendix 2-A-4 (Specific Measures by Viet Nam governing the Importation and Exportation of Goods) to any other trading partner shall automatically apply under this Agreement. Viet Nam shall notify the Union of any amendment or preference referred to in this paragraph.

4. In accordance with the WTO Agreement, a Party may implement any measure authorised by the Dispute Settlement Body of the WTO against the other Party.

5. When a Party adopts or maintains an import or export prohibition or restriction it shall ensure full transparency thereof.

ARTICLE 2.15

Trading Rights and Related Rights for Pharmaceuticals

1. Viet Nam shall adopt and maintain appropriate legal instruments allowing foreign pharmaceutical companies to establish foreign-invested enterprises for the purposes of importing pharmaceuticals which have obtained a marketing authorisation by Viet Nam's competent authorities. Without prejudice to Viet Nam's schedules included in Annex 8-B (Viet Nam's Schedule of Specific Commitments), such foreign-invested enterprises are allowed to sell pharmaceuticals which they have legally imported to distributors or wholesalers who have the right to distribute pharmaceuticals in Viet Nam.

2. Foreign-invested enterprises referred to in paragraph 1 are allowed to:

(a) build their own warehouses to store pharmaceuticals which they have legally imported into Viet Nam in accordance with the regulations issued by the Ministry of Health, or its successor;

(b) provide information relating to pharmaceuticals, which they have legally imported into Viet Nam, to health care professionals in accordance with the regulations issued by the Ministry of Health, or its successor, and Viet Nam's other competent authorities; and

(c) carry out clinical study and testing pursuant to Article 3 (International Standards) of Annex 2-C (Pharmaceutical/Medicinal Products and Medical Devices) and in accordance with the regulations issued by the Ministry of Health, or its successor, to ensure that the pharmaceuticals which they have legally imported into Viet Nam are suitable for domestic consumption.

ARTICLE 2.16

Import Licensing Procedures

1. The Parties affirm their rights and obligations under the Import Licensing Agreement.

2. Each Party shall notify the other Party of its existing import licensing procedures, including the legal basis and the relevant official website, within 30 days of the entry into force of this Agreement unless they were already notified or provided under Article 5 or paragraph 3 of Article 7 of the Import Licensing Agreement. The notification shall contain the same information as referred to in Article 5 or paragraph 3 of Article 7 of the Import Licensing Agreement.

3. Each Party shall notify the other Party of any introduction or modification of any import licensing procedure which it intends to adopt no later than 45 days before the new procedure or modification takes effect. In no case shall a Party provide such notification later than 60 days following the date of the publication of the introduction or modification unless this was already notified in accordance with Article 5 of the Import Licensing Agreement. The notification shall contain the same information as referred to in Article 5 of the Import Licensing Agreement.

4. Each Party shall publish on an official website any information that it is required to publish under subparagraph 4(a) of Article 1 of the Import Licensing Agreement.

5. Upon request of a Party, the other Party shall respond within 60 days to a reasonable enquiry regarding any import licensing procedure which it intends to adopt or has adopted or maintained, as well as the criteria for granting or for allocating import licenses, including the eligibility of persons, firms, and institutions to make such an application, the administrative body or bodies to be approached and the list of products subject to the import licensing requirement.

6. The Parties shall introduce and administer import licensing procedures in accordance with:

(a) paragraphs 1 to 9 of Article 1 of the Import Licensing Agreement;

(b) Article 2 of the Import Licensing Agreement; and

(c) Article 3 of the Import Licensing Agreement.

To that end, the provisions referred to in subparagraphs (a), (b) and (c) are incorporated into and made part of this Agreement, *mutatis mutandis*.

7. A Party shall only adopt or maintain automatic import licensing procedures as a condition for importation into its territory in order to fulfil legitimate objectives after having conducted an appropriate impact assessment.

8. A Party shall grant import licences for an appropriate length of time which shall not be shorter than set out in the domestic legislation providing for the import licensing requirements and which shall not preclude imports.

9. Where a Party has denied an import licence application with respect to a good of the other Party, it shall, upon request of the applicant and promptly after receiving the request, provide the applicant with a written explanation of the reasons for the denial. The applicant shall have the right of appeal or review in accordance with the domestic legislation or procedures of the importing Party.

10. The Parties shall only adopt or maintain non-automatic import licensing procedures in order to implement a measure that is not inconsistent with this Agreement, including with Article 2.22 (General Exceptions). A Party adopting non-automatic import licensing procedures shall indicate clearly the purpose of such licensing procedures.

ARTICLE 2.17

Export Licensing Procedures

1. Each Party shall notify the other Party of its existing export licensing procedures, including the legal basis and the relevant official website, within 30 days of the entry into force of this Agreement.

2. Each Party shall notify the other Party of any introduction or modification of an export licensing procedure which it intends to adopt no later than 45 days before the new procedure or modification takes effect. In no case shall a Party provide such notification later than 60 days following the date of the publication of the introduction or modification.

3. The notification referred to in paragraphs 1 and 2 shall contain the following information:

(a) the texts of its export licensing procedures, including any modifications;

(b) the products subject to each export licensing procedure;

(c) for each export licensing procedure, a description of:

(i) the process for applying for an export licence; and

(ii) criteria which an applicant must meet to be eligible to apply for an export licence;

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

(e) the administrative body or bodies to which an application or other relevant documentation shall be submitted;

(f) the period during which each export licensing procedure will be in effect;

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

(h) any exceptions or derogations from an export licensing requirement, how to request those exceptions or derogations, and the criteria for granting them.

4. Each Party shall publish any export licensing procedure, including the legal basis and a reference to the relevant official website. Each Party shall also publish any new export licensing procedure, or any modification to its export licensing procedures, as soon as possible but in any case no later than 45 days after its adoption and at least 25 working days before its entry into force.

5. Upon request of a Party, the other Party shall respond within 60 days to a reasonable enquiry regarding any export licensing procedures which it intends to adopt or which it has adopted or maintained as well as the criteria for granting or for allocating export licenses, including the eligibility of persons, firms, and institutions to make such an application, the administrative body or bodies to be approached, and the list of products subject to the export licensing requirement.

6. The Parties shall introduce and administer any export licensing procedures in accordance with:

(a) paragraphs 1 to 9 of Article 1 of the Import Licensing Agreement;

(b) Article 2 of the Import Licensing Agreement;

(c) Article 3 of the Import Licensing Agreement with the exception of subparagraphs 5(a), (c), (j) and (k).

To that end, the provisions referred to in subparagraphs (a), (b) and (c) are incorporated into and made part of this Agreement, *mutatis mutandis*.

7. Each Party shall ensure that all export licensing procedures are neutral in application and administered in a fair, equitable, non-discriminatory and transparent manner.

8. A Party shall grant export licences for an appropriate length of time which shall not be shorter than set out in the domestic legislation providing for the export licensing requirement and which shall not preclude exports.

9. When a Party has denied an export licence application with respect to a good of the other Party, it shall, upon request of the applicant and promptly after receiving the request, provide the applicant with a written explanation of the reasons for the denial. The applicant shall have the right of appeal or review in accordance with the domestic legislation or procedures of the exporting Party.

10. A Party shall only adopt or maintain automatic export licensing procedures as a condition for exportation from its territory in order to fulfil legitimate objectives after having conducted an appropriate impact assessment.

11. The Parties shall only adopt or maintain non-automatic export licensing procedures in order to implement a measure that is not inconsistent with this Agreement, including with Article 2.22 (General Exceptions). A Party adopting non-automatic export licensing procedures shall indicate clearly the purpose of such licensing procedures.

ARTICLE 2.18

Administrative Fees, Other Charges and Formalities on Imports and Exports

1. Each Party shall ensure that fees, charges, formalities and requirements, other than import and export customs duties and measures listed in subparagraphs (i), (ii) and (iii) of paragraph (d) of Article 2.3 (Definitions), are consistent with the Parties' obligations under Article VIII of GATT 1994, including its Notes and Supplementary Provisions.

2. A Party shall only impose fees and charges for services provided in connection with importation and exportation of goods. Fees and charges shall not be levied on an *ad valorem* basis and shall not exceed the approximate cost of the service provided. Each Party shall publish information on fees and charges it imposes in connection with the importation and exportation of goods in accordance with Article 4.10 (Fees and Charges).

3. A Party shall not require consular transactions, including related fees and charges, in connection with the importation or exportation of goods. After three years from the date of entry into force of this Agreement, a Party shall not require consular authentication for the importation of goods covered by this Agreement.

ARTICLE 2.19

Origin Marking

Except as otherwise provided for in this Agreement, when Viet Nam applies mandatory country of origin marking requirements to non-agricultural products of the Union, Viet Nam shall accept the marking "Made in EU", or a similar marking in the local language, as fulfilling such requirements.

ARTICLE 2.20

State Trading Enterprises

1. The Parties affirm their existing rights and obligations under Article XVII of GATT 1994, including its Notes and Supplementary Provisions, and the WTO Understanding on the Interpretation of Article XVII of GATT 1994, which are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. When a Party requests information from the other Party on individual cases of state trading enterprises and on their operations, including information on their bilateral trade, the requested Party shall ensure transparency subject to subparagraph 4(d) of Article XVII of GATT 1994.

ARTICLE 2.21

Elimination of Sector-Specific Non-Tariff Measures

1. The Parties shall implement their commitments on sector-specific non-tariff measures on goods as set out in Annexes 2-B (Motor Vehicles and Motor Vehicles Parts and Equipment) and 2-C (Pharmaceutical/Medicinal Products and Medical Devices).

2. Except as otherwise provided for in this Agreement, 10 years after the entry into force of this Agreement and upon request of either Party, the Parties shall, in accordance with their internal procedures, enter into negotiations with the aim of broadening the scope of their commitments on sector-specific non-tariff measures on goods.

ARTICLE 2.22

General Exceptions

1. Nothing in this Chapter prevents either Party from taking measures in accordance with Article XX of GATT 1994, including its Notes and Supplementary Provisions, which are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that before taking any measures provided for in paragraphs (i) and (j) of Article XX of GATT 1994, the exporting Party intending to take such measures shall provide the other Party with all relevant information. Upon request, the Parties shall consult with a view to seeking an acceptable solution. The Parties may agree on any means needed to resolve the difficulties. If prior information or examination is impossible due to exceptional and critical circumstances requiring immediate action, the exporting Party may apply the necessary precautionary measures and shall immediately inform the other Party thereof.

ARTICLE 2.23

Committee on Trade in Goods

1. The Committee on Trade in Goods established pursuant to Article 17.2 (Specialised Committees) shall comprise representatives of the Parties.

2. The Committee on Trade in Goods shall consider any matter arising under this Chapter and Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation).

3. The Committee on Trade in Goods shall carry out the following tasks in accordance with Article 17.2 (Specialised Committees):

(a) reviewing and monitoring the implementation and operation of the provisions referred to in paragraph 2;

(b) identifying and recommending measures to resolve any difference that may arise, and to promote, facilitate and improve market access, including any acceleration of tariff commitments under Article 2.7 (Reduction or Elimination of Customs Duties);

(c) recommending the Trade Committee to establish working groups, as it deems necessary;

(d) undertaking any additional work that the Trade Committee may assign; and

(e) proposing decisions to be adopted by the Trade Committee for amending the list of fragrant rice varieties included in subparagraph 5(c) of Sub-Section 1 (Union Tariff Rate Quotas) of Section B (Tariff Rate Quotas) of Annex 2-A (Reduction or Elimination of Customs Duties).

CHAPTER 3

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 3.1

General Provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

2. The Parties, recognising that anti-dumping and countervailing measures can be abused to obstruct trade, agree that:

(a) trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system; and

(b) careful consideration should be given to the interests of the other Party when a Party considers imposing such measures.

3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

ARTICLE 3.2

Transparency

1. 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 the final determination is made, full and meaningful disclosure to interested parties of all essential facts and considerations which form the basis for the decision to apply measures. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.

2. Provided it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

ARTICLE 3.3

Consideration of Public Interest

A Party shall not impose anti-dumping or countervailing measures where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. In determining the public interest, the Party shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, based on the relevant information provided to the investigating authorities.

ARTICLE 3.4

Lesser Duty Rule

An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and the 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.

ARTICLE 3.5

Exclusion from Dispute Settlement

The provisions of this Section shall not be subject to Chapter 15 (Dispute Settlement).

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE 3.6

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.

3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

ARTICLE 3.7

Transparency

1. Notwithstanding Article 3.6 (General Provisions), the Party initiating a global safeguard investigation or intending to impose global safeguard measures shall immediately provide, at the request of the other Party and provided that it has a substantial interest, *ad hoc* written notification of all pertinent information leading to the initiation of a global safeguard investigation and, as the case may be, the proposal to impose the global safeguard measures, including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.

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 bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the Party may adopt the definitive global safeguard measures. The possibility to hold consultations should be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

ARTICLE 3.8

Exclusion from Dispute Settlement

The provisions of this Section referring to WTO rights and obligations shall not be subject to Chapter 15 (Dispute Settlement).

SECTION C

BILATERAL SAFEGUARD CLAUSE

ARTICLE 3.9

Definitions

For the purposes of this Section:

(a) "domestic industry" shall be understood in accordance with subparagraph 1(c) of Article 4 of the Safeguards Agreement. To that end, subparagraph 1(c) of Article 4 of the Safeguards Agreement 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 subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement; to that end subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*; and

(c) "transition period" means a period of 10 years from the entry into force of this Agreement.

ARTICLE 3.10

Application of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, any good originating in the territory of a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section during the transition period only, except as otherwise provided for in subparagraph 6(c) of Article 3.11 (Conditions and Limitations).

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

(a) suspends the further reduction of the rate of customs duty on the good concerned as provided for in Annex 2-A (Elimination of Customs Duties); 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 2.6 (Reduction or Elimination of Customs Duties on Imports).

ARTICLE 3.11

Conditions and Limitations

1. A Party shall notify the other Party in writing of the initiation of the investigation referred to in paragraph 2 and consult with the other Party as far as practicable in advance of 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 only apply a bilateral safeguard measure following an investigation by its competent authorities in accordance with Article 3 and subparagraph 2(c) of Article 4 of the Safeguards Agreement. To that end, Article 3 and subparagraph 2(c) of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. In the investigation referred to in paragraph 2, the Party shall comply with the requirements of subparagraph 2(a) of Article 4 of the Safeguards Agreement. To that end, subparagraph 2(a) of Article 4 of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

4. The investigation shall also demonstrate, on the basis of objective evidence, the existence of a causal link between increased imports and the serious injury or threat thereof. The investigation shall also take into consideration the existence of any factor other than increased imports which may also cause injury at the same time.

5. Each Party shall ensure that its competent authorities complete the investigation referred to in paragraph 2 within one year of the date of its initiation.

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

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

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

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

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

8. When 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 but for the measure.

ARTICLE 3.12

Provisional Measures

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to 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 that such imports cause serious injury, or threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 3.11 (Conditions and Limitations). The Party shall promptly refund any tariff increases if the investigation referred to in paragraph 2 of Article 3.11 (Conditions and Limitations) does not result in a finding that the requirements of paragraph 1 of Article 3.10 (Application of a Bilateral Safeguard Measure) are met. The duration of any provisional measure shall be counted as part of the period prescribed by subparagraph 5(b) of Article 3.11 (Conditions and Limitations).

ARTICLE 3.13

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 in the form of concessions equivalent to the value of the additional duties expected to result from the 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 under 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 bilateral safeguard measure may suspend the application of concessions, with respect to originating goods of the Party applying the bilateral safeguard measure, which have trade effects substantially equivalent to the bilateral safeguard measure. The obligation to provide compensation, incumbent on the Party applying the bilateral safeguard measure, and the other Party's right to suspend concessions under this paragraph shall terminate on the same date as the bilateral safeguard measure terminates.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.

ARTICLE 3.14

Use of the English Language

In order to ensure the maximum efficiency for the application of the trade remedy rules under this Chapter, the investigating authorities of the Parties shall use the English language as a basis for communications and documents exchanged in the context of trade remedy investigations between the Parties.

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

ARTICLE 4.1

Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties shall reinforce cooperation in this area with a view to ensuring that their respective customs legislation and procedures fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

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

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

ARTICLE 4.2

Customs Cooperation and Mutual Administrative Assistance

1. The respective authorities of the Parties shall cooperate on customs matters in order to ensure that the objectives set out in Article 4.1 (Objectives) are attained.

2. The Parties shall enhance customs cooperation, *inter alia*, by:

(a) exchanging information concerning customs legislation, its implementation, and customs procedures, in particular in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) border enforcement of intellectual property rights by the customs authorities;

(iii) facilitation of transit movements and transhipment; and

(iv) relations with the business community;

(b) exploring joint initiatives relating to import, export and other customs procedures, including technical assistance, in order to ensure effective services to the business community;

(c) strengthening their cooperation in the field of customs in international organisations such as the WTO and the World Customs Organization (hereinafter referred to as "WCO"); and

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

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with Protocol 2 (Mutual Administrative Assistance in Customs Matters).

ARTICLE 4.3

Customs Legislation and Procedures

1. The Parties shall base their respective customs legislation and procedures on international instruments and standards applicable in the area of customs and trade, including the substantive elements of the *Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures*, done at Brussels on 26 June 1999, the *International Convention on the Harmonized Commodity Description and Coding System* (hereinafter referred to as "HS Convention"), the *Framework of Standards to Secure and Facilitate Global Trade* and the *Customs Data Model* of the WCO.

2. The customs legislation and procedures of the Parties shall:

(a) aim at the protection of legitimate trade through effective enforcement and compliance with legislative requirements;

(b) avoid unnecessary or discriminatory burdens on economic operators, and provide for further facilitation for operators with high levels of compliance; and

(c) ensure safeguards against fraud and illicit or damaging activities.

3. The Parties agree that their respective customs legislation and procedures, including remedies shall be proportionate and non-discriminatory and that their application shall not unduly delay the release of goods.

4. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:

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

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

ARTICLE 4.4

Release of Goods

1. Each Party shall ensure that its customs authorities apply requirements and procedures that provide for the release of goods within a period no longer than that required to ensure compliance with its customs and other trade-related laws and formalities. Each Party shall work towards further reducing this period and releasing the goods without undue delay.

2. The Parties shall allow, *inter alia,* the release of goods without the payment of customs duties, subject to the provision of a guarantee if required in accordance with their legislation in order to secure the final payment of customs duties.

3. Each Party shall ensure that its customs authorities provide for advance electronic submission and further processing of information before the physical arrival of goods (pre-arrival processing) to enable the release of goods on arrival.

ARTICLE 4.5

Simplified Customs Procedures

1. 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 small and medium-sized enterprises. Easier access to customs simplifications shall also be provided for authorised traders according to objective and non-discriminatory criteria.

2. A single administrative document or electronic equivalent shall be used for the purposes of completing the formalities required for placing the goods under a customs procedure.

3. The Parties shall apply modern customs techniques, including risk assessment and post-clearance audit methods, in order to simplify and facilitate the entry and the release of goods.

4. The Parties shall promote the progressive development and use of systems, including those based on information technology, to facilitate the electronic exchange of data between traders, customs administrations and other related agencies.

ARTICLE 4.6

Transit and Transhipment

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

2. To facilitate traffic in transit each Party shall ensure cooperation and coordination between all authorities and agencies concerned in its territory.

ARTICLE 4.7

Risk Management

1. Each Party shall base its examination and release procedures and its post-clearance audit procedures on risk assessment principles and audits, rather than examining each shipment in a comprehensive manner for compliance with all import requirements.

2. The Parties shall adopt and apply their import, export, transit and transhipment control requirements and procedures for goods on the basis of risk management principles which shall be applied to focus compliance measures on transactions that merit attention.

ARTICLE 4.8

Transparency

1. Each Party shall ensure that its customs and other trade-related laws, regulations and general administrative procedures and other requirements, including fees and charges, are readily available to interested parties and, where feasible and possible, on an official website.

2. Each Party shall designate or maintain one or more inquiry or information points to address, within a reasonable time, inquiries by interested parties concerning customs and other trade-related matters.

ARTICLE 4.9

Advance Rulings

1. Upon written request from traders, the customs authorities of each Party shall issue, in accordance with its laws and regulations, prior to the importation of a good into its territory, written advance rulings on tariff classification or on any other matter as the Parties may agree upon.

2. Subject to any confidentiality requirements in each Party's laws and regulations, each Party shall publish, for example on an official website, its advance rulings on tariff classification and on any matters as the Parties may agree upon.

3. With a view to facilitating trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective laws and regulations on advance rulings.

ARTICLE 4.10

Fees and Charges

1. Each Party shall publish information on fees and charges via an officially designated medium, and where feasible and possible, on an official website. This information shall include the fees and charges that will be applied, the reason for the fees or charges for the service provided, the responsible authority, and when and how payment is to be made.

2. Each Party shall not impose new or amended fees and charges until the information in accordance with paragraph 1 is published and made readily available.

ARTICLE 4.11

Customs Brokers

The Parties shall not require in their respective customs legislation and procedures the mandatory use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

ARTICLE 4.12

Customs Valuation

1. The Parties shall determine the customs value of goods in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

ARTICLE 4.13

Preshipment Inspections

The Parties agree that their respective customs legislation and procedures shall not require the mandatory use of preshipment inspections as defined in the Agreement on Preshipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

ARTICLE 4.14

Review and Appeal

Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against customs and other agency administrative actions, rulings and decisions affecting importation or exportation of goods or goods in transit.

ARTICLE 4.15

Relations with the Business Community

The Parties agree:

(a) on the need for timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation matters. To that end, appropriate consultations between administrations and the business community shall be held by each Party;

(b) to publish or otherwise make available, as far as possible through electronic means, any new legislation and general procedures related to customs and trade facilitation matters prior to the application of any such legislation and procedures, as well as changes to and interpretations of such legislation and procedures. They shall also make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and contact points for information enquiries;

(c) on the need for a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force; and

(d) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the business community, follow best practices, and remain as little trade-restrictive as possible.

ARTICLE 4.16

Committee on Customs

1. The Committee on Customs established by Article 17.2 (Specialised Committees) shall be composed of representatives of the Parties.

2. The Committee on Customs shall ensure the proper functioning of this Chapter, the enforcement of intellectual property rights by customs in Sub-Section 4 (Border Enforcement) of Section C (Enforcement of Intellectual Property Rights) of Chapter 12 (Intellectual Property), Protocol 1 (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation), Protocol 2 (Mutual Administrative Assistance in Customs Matters) and any additional provisions relating to customs that the Parties may agree upon.

3. The Committee on Customs shall examine the need for, and adopt, decisions, opinions, proposals or recommendations on all issues arising from the implementation of the provisions referred to in paragraph 2. It shall have the power to adopt decisions on mutual recognition of risk management techniques, risk criteria and standards, security controls and trade partnership programmes, including aspects such as data transmission and mutually agreed benefits.

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

ARTICLE 5.1

Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement, which is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.2

Objectives

1. The objectives of this Chapter are to facilitate and increase bilateral trade in goods by preventing, identifying and eliminating unnecessary obstacles to trade within the scope of the TBT Agreement, and to enhance bilateral cooperation between the Parties.

2. The Parties shall establish and enhance technical capabilities and institutional infrastructure on matters concerning technical barriers to trade.

ARTICLE 5.3

Scope and Definitions

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

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

(b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement.

2. Each Party has the right to prepare, adopt and apply standards, technical regulations and conformity assessment procedures in accordance with this Chapter and the TBT Agreement.

3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement apply.

ARTICLE 5.4

Technical Regulations

1. Each Party shall make best use of good regulatory practice, as provided for in the TBT Agreement and in this Chapter, in particular, by:

(a) assessing the available regulatory and non-regulatory alternatives to a proposed technical regulation that would fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement; endeavouring to assess, *inter alia*, the impact of a proposed technical regulation by means of a regulatory impact assessment, as recommended by the Committee on Technical Barriers to Trade established under Article 13 of the TBT Agreement;

(b) using relevant international standards, such as those developed by the International Organization for Standardization, the International Electrotechnical Commission, the International Telecommunication Union and the Codex Alimentarius Commission, as a basis for their technical regulations, except when such international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued by a Party. When a Party has not used international standards as a basis for its technical regulations, it shall, upon request of the other Party, identify any substantial deviation from the relevant international standards and explain the reasons why those standards have been judged inappropriate or ineffective for the objective pursued;

(c) reviewing, without prejudice to Article 2.3 of the TBT Agreement, technical regulations with a view to increasing their convergence with relevant international standards. In undertaking this review, the Parties shall, *inter alia*, take into account any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist;

(d) specifying technical regulations based on product performance requirements, rather than on design or descriptive characteristics.

2. In accordance with Article 2.7 of the TBT Agreement, a Party shall give favourable consideration to accepting as equivalent technical regulations of the other Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.

3. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party because it has a compatible objective and product scope may request in writing that the other Party recognise it as equivalent. That request shall be made in writing and set out in detail the reasons why the technical regulations should be considered to be equivalent, including reasons with respect to product scope. A Party which does not agree that the technical regulations are equivalent shall provide to the other Party, upon request, the reasons for its decision.

ARTICLE 5.5

Standards

1. The Parties affirm their obligations under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the TBT Agreement. The Parties further affirm their adherence to the principles set out in *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995*, G/TBT/1/rev.12, of 21 January 2015, (hereinafter referred to as "the document"), including the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement,* referred to in the Annexes to Part 1 of the document.

2. With a view to harmonising standards on as wide a basis as possible, the Parties shall encourage their standardising bodies as well as the regional standardising bodies of which they or their standardising bodies are members to:

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

(b) use relevant international standards as a basis for the standards they develop, except where those international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued by a Party, 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 regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards; and

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

3. The Parties shall exchange information on:

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

(b) their standardisation processes, and the extent of their use of international or regional standards as basis for their national standards; and

(c) cooperation agreements on standardisation implemented by either Party, including on standardisation issues in international agreements with third parties, to the extent this is not explicitly prohibited by those agreements.

4. The Parties recognise that in accordance with Annex 1 to the TBT Agreement, compliance with standards is voluntary. When a Party makes compliance with standards mandatory, through incorporation or referencing in technical regulations or conformity assessment procedures, Article 5.7 (Transparency) applies.

ARTICLE 5.6

Conformity Assessment Procedures

1. In respect of mandatory conformity assessment procedures the Parties shall apply paragraph 1 of Article 5.4 (Technical Regulations), *mutatis mutandis,* with a view to avoiding unnecessary obstacles to trade and ensuring transparency and non-discrimination.

2. In line with Article 5.1.2 of the TBT Agreement, when an importing Party requires positive assurance of conformity with its applicable technical regulations or standards, its conformity assessment procedures shall neither be stricter nor applied more strictly than necessary to give this Party adequate confidence that products conform with its applicable technical regulations or standards, taking account of the risks non-conformity would create.

3. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

(a) the importing Party's reliance on a supplier's declaration of conformity;

(b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(c) use of accreditation to qualify conformity assessment bodies located in the territory of either Party;

(d) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;

(e) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;

(f) voluntary arrangements between conformity assessment bodies located in the territory of either Party; and

(g) use of regional and international multilateral recognition agreements and arrangements to which the Parties are party.

4. Having regard in particular to the considerations referred to in paragraph 3, the Parties shall:

(a) intensify their exchange of information on the mechanism referred to in paragraph 3 and on similar mechanisms with a view to facilitating the acceptance of conformity assessment results;

(b) exchange information on conformity assessment procedures and, in particular, on the criteria used to select appropriate conformity assessment procedures for specific products;

(c) consider a supplier's declaration of conformity as one of the assurances of conformity with domestic law;

(d) consider arrangements on mutual acceptance of the results of conformity assessment procedures according to the procedure set out in paragraph 5;

(e) exchange information on accreditation policy and to consider how to best make use of international standards for accreditation and of international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation and the International Accreditation Forum;

(f) consider joining or, as applicable, to encourage their testing, inspection and certification bodies to join any operative international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(g) ensure that economic operators have a choice amongst conformity assessment facilities designated by the authorities to perform the tasks required by domestic law to assure compliance;

(h) endeavour to use accreditation to qualify conformity assessment bodies; and

(i) ensure independence of, and absence of conflict of interest between, accreditation bodies and conformity assessment bodies.

5. Upon request from a Party, the other Party may decide to enter into consultations with a view to defining sectoral initiatives regarding the use of conformity assessment procedures or the facilitation of acceptance of conformity assessment results that are appropriate for the respective sectors. The Party making the request should provide relevant information on how the sectoral initiative would facilitate trade. If the other Party declines that request it shall, upon request, provide its reasons.

6. The Parties affirm their obligations under Article 5.2.5 of the TBT Agreement that fees imposed for mandatory conformity assessment of imported products shall be equitable in relation to any fees chargeable for assessing the conformity of like products of domestic origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body.

ARTICLE 5.7

Transparency

The Parties acknowledge the importance of transparency with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. In that regard, the Parties affirm their transparency obligations under the TBT Agreement. Each Party shall:

(a) take the other Party's comments into account where a part of the process of developing a technical regulation is open to public consultation, and provide, upon request, written responses in a timely manner to the comments made by the other Party;

(b) ensure that economic operators and other interested persons of the other Party are allowed to participate in any formal public consultation process concerning the development of technical regulations, on terms no less favourable than those accorded to its own legal or natural persons;

(c) further to subparagraph 1(a) of Article 5.4 (Technical Regulations), in cases where impact assessments are carried out, inform the other Party, upon request, of the outcome of the impact assessment of the proposed technical regulation;

(d) when making notifications in accordance with Article 2.9.2 or 5.6.2 of the TBT Agreement:

(i) allow at least a period of 60 days, following the notification, for the other Party to provide comments in writing to the proposal and, where practicable, give due consideration to reasonable requests for extending that period;

(ii) provide the electronic version of the notified text;

(iii) provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the WTO notification format;

(iv) reply in writing to written comments received from the other Party on the proposal, no later than the date of publication of the final technical regulation or conformity assessment procedure; and

(v) provide information on the adoption and the entry into force of the notified measure and the adopted final text through an addendum to the original notification;

(e) allow sufficient time between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise;

(f) ensure that all technical regulations and mandatory conformity assessment procedures adopted and in force are publicly available on official websites and free of charge; and

(g) ensure that the enquiry point, established in accordance with Article 10.1 of the TBT Agreement, provides information and answers in one of the official WTO languages to reasonable enquiries from the other Party or from interested persons of the other Party on adopted technical regulations, conformity assessment procedures and standards.

ARTICLE 5.8

Market Surveillance

The Parties shall:

(a) exchange views on market surveillance and enforcement activities;

(b) ensure that 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

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

ARTICLE 5.9

Marking and Labelling

1. The Parties note that a technical regulation may include or deal exclusively with marking or labelling requirements. When a Party's technical regulations contain mandatory marking or labelling requirements, that Party shall observe the principles of Article 2.2 of the TBT Agreement, in particular, that technical regulations shall not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and that they shall not be more trade restrictive than necessary to fulfil a legitimate objective.

2. When requiring mandatory marking or labelling of products, a Party shall:

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

(b) not require any prior approval, registration or certification of the labels or markings of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless it is necessary in view of the risk of the products to human, animal or plant health or life, the environment or national security; this provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in light of the relevant domestic regulations;

(c) in the event that it requires the use of a unique identification number by economic operators, issue that 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 Party importing the goods, permit the following:

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

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; or

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

(e) accept that labelling, including supplementary labelling or corrections to labelling, take place, where relevant, in authorised premises, such as in customs or bonded licensed warehouses at the point of import, in the importing Party prior to the distribution and sale of the product; the Party may require that the original labelling is not removed;

(f) when it considers that the legitimate objectives under the TBT Agreement are not compromised, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 5.10

Cooperation and Trade Facilitation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and to facilitating trade between them. To that end, they may establish regulatory dialogues at both horizontal and sectoral levels.

2. The Parties shall aim to identify, develop and promote bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors and which facilitate trade. Those initiatives may include:

(a) promoting good regulatory practices through regulatory cooperation, including the exchange of information, experiences and data, with a view to improving the quality and effectiveness of their standards, technical regulations and conformity assessment procedures and making efficient use of regulatory resources;

(b) using a risk-based approach to conformity assessment such as relying on a supplier's declaration of conformity for low-risk products and, where appropriate, reducing the complexity of technical regulations, standards and conformity assessment procedures;

(c) increasing the convergence of their standards, technical regulations and conformity assessment procedures with relevant international standards, guides or recommendations;

(d) avoiding unnecessary divergence of approach in standards, technical regulations and conformity assessment procedures where no international standards, guides or recommendations exist;

(e) promoting or enhancing cooperation between the Parties' respective organisations, public or private, responsible for standardisation, conformity assessment and metrology;

(f) ensuring efficient interaction and cooperation between regulatory authorities at regional or international level; and

(g) exchanging information, to the extent possible, about agreements and arrangement related to technical barriers to trade subscribed to at international level.

3. Upon request, a Party shall give due consideration to proposals for cooperation from the other Party under this Chapter. This cooperation shall be undertaken, *inter alia*, through dialogue in appropriate *fora*, joint projects, technical assistance and capacity-building programmes on standards, technical regulations and conformity assessment procedures in selected industrial areas, as mutually agreed.

ARTICLE 5.11

Consultations

1. A Party shall give prompt and favourable consideration to any request for consultations from the other Party on issues relating to the implementation of this Chapter.

2. In order to clarify or resolve issues referred to in paragraph 1, the Trade Committee may establish a working group with a view to identifying a workable and practical solution to facilitate trade. The working group shall comprise representatives of the Parties.

ARTICLE 5.12

Implementation

1. Each Party shall designate a contact point in the Ministry of Science and Technology of Viet Nam and the European Commission, respectively, and provide the other Party with the contact details of the office or official responsible for matters covered under this Chapter, including information on telephone, facsimile, e-mail and other relevant details.

2. Each Party shall promptly notify the other Party of any change of its contact point and amendments to the information referred to in paragraph 1.

3. The contact points shall, *inter alia*:

(a) monitor the implementation and administration of this Chapter;

(b) facilitate cooperation activities, as appropriate, in accordance with Article 5.10 (Joint Cooperation and Trade Facilitation);

(c) promptly address any issue that a Party raises in relation to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures;

(d) consult, upon a Party's request, on matters arising under this Chapter;

(e) take any other actions which may assist the Parties in implementing this Chapter; and

(f) carry out other functions as may be delegated by the Committee on Trade in Goods.

4. The enquiry points, established in accordance with Article 10.1 of the TBT Agreement, shall:

(a) facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from the other Party; and

(b) refer enquiries from the other Party to the appropriate regulatory authorities.

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Scope

1. This Chapter applies to the preparation, adoption and application of all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of a Party which may, directly or indirectly affect trade between the Parties.

2. This Chapter does not affect the rights of the Parties under Chapter 5 (Technical Barriers to Trade) with respect to measures not within the scope of this Chapter.

ARTICLE 6.2

Objectives

The objectives of this Chapter are to:

(a) enhance the effective implementation of the principles and disciplines of the SPS Agreement and international standards, guidelines and recommendations developed by relevant international organisations;

(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 SPS measures adopted by each Party do not create unnecessary obstacles to trade;

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

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

ARTICLE 6.3

Definitions

1. For the purposes of this Chapter:

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

(b) "competent authorities" means each Party's authorities responsible for developing, implementing and administering SPS measures within its territory; and

(c) "SPS Committee" means the Committee on Sanitary and Phytosanitary Measures referred to in Article 6.11 (Committee on Sanitary and Phytosanitary Measures) established pursuant to Article 17.2 (Specialised Committees).

2. The Parties may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions of the 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 "OIE"), and the International Plant Protection Convention (hereinafter referred to as "IPPC").

ARTICLE 6.4

General Provisions

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

2. Each Party shall apply the SPS Agreement 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 its territory.

ARTICLE 6.5

Competent Authorities and Contact Points

1. To ensure close and effective working relationships between the Parties in achieving the objectives of this Chapter, the competent authorities are:

(a) in the case of Viet Nam, responsibility for SPS matters is shared between governmental agencies as follows:

(i) the Ministry of Agriculture and Rural Development, or its successor, is responsible for animal and plant health; it administers surveillance and control measures to prevent the introduction of diseases which negatively affect human and animal health; it also administers a comprehensive program to control and prevent the incursion of diseases and pests which negatively affect plant health and the economy; and, for animal and plant products destined for exportation, it is also responsible for inspection, for quarantine and for the issuance of certifications attesting to the agreed standards and requirements of the Union; and

(ii) the Ministry of Health, the Ministry of Agriculture and Rural Development and the Ministry of Industry and Trade, or their respective successors, are, in accordance with their respective competences, responsible for the safety of food destined for human consumption; for the importation of food, they administer surveillance and control measures, including the development of national technical regulations and approval procedures, the conduct of risk assessment of products and inspections of establishments, to ensure the compliance with the agreed standards and requirements of Viet Nam; for the exportation of food, they are also responsible for inspection and for the issuance of health certifications;

(b) in the case of the Union, responsibility is shared between the administrations of the Member States and the European Commission as follows:

(i) as regards exports to Viet Nam, the Member States are responsible for the control of the production conditions and requirements, including statutory inspections and issuing health and animal welfare certifications attesting to compliance with Viet Nam's standards and requirements;

(ii) as regards imports from Viet Nam, the Member States are responsible for controlling compliance of imports with the Union's import conditions;

(iii) the European Commission is responsible for overall coordination, inspection and audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Union's internal market.

2. As of the date of entry into force of this Agreement, the competent authorities of each Party shall provide each other with a contact point for communication on all matters arising under this Chapter. The contact points' functions shall include:

(a) enhancing communication among the Parties' agencies and ministries responsible for SPS matters; and

(b) facilitating information exchange in order to enhance mutual understanding of each Party's SPS measures, the regulatory processes that relate to those measures and their impact on trade in the products concerned between the Parties.

3. The Parties shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

ARTICLE 6.6

Import Requirements and Procedures

1. The general import requirements of a Party shall be applicable to the entire territory of the exporting Party, without prejudice to the ability of the importing Party to take decisions and measures in accordance with the criteria set out in Article 6.9 (Measures linked to Animal and Plant Health).

2. Each Party shall adopt only measures that are scientifically justified, consistent with the risk involved and that represent the least restrictive measures available and result in minimum impediment to trade.

3. The importing Party shall ensure that its import requirements and procedures are applied in a proportional and non-discriminatory manner.

4. The import procedures shall aim at minimising negative trade effects and expedite the clearance process while complying with the importing Party's requirements and procedures.

5. The importing Party shall ensure full transparency of its import requirements and procedures.

6. The exporting Party shall ensure compliance with the import requirements of the importing Party.

7. Each Party shall establish and update lists of regulated pests, using scientific terminology, and make such lists available to the other Party.

8. Phytosanitary import requirements shall be restricted to measures ensuring the respect for the appropriate level of protection of the importing Party, and limited to the regulated pests of concern to the importing Party. Without prejudice to Article 6 of the IPPC, a Party shall not impose or maintain phytosanitary measures for non-regulated pests.

9. A pest risk analysis undertaken by a Party shall be carried out without undue delay after the initial request of the exporting Party. In case of difficulties, the Parties shall agree within the SPS Committee on a time schedule for carrying out the pest risk analysis.

10. The importing Party shall have the right to carry out import checks based on the SPS risks associated with imports. Those checks shall be carried out without undue delay and with a minimum impediment to trade. If products do not conform to the requirements of the importing Party, any action taken by the importing Party shall be in conformity with the international standards and proportionate to the risk caused by the product.

11. The importing Party shall make available the information about the frequency of import checks carried out on products. This frequency may be adapted as a consequence of verifications or import checks, or by mutual agreement between the Parties.

12. Any fees imposed for the procedures related to the import of products under this Chapter 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.

ARTICLE 6.7

Verifications

1. In order to obtain or maintain confidence in the effective implementation of this Chapter, the importing Party has the right to carry out verifications, including:

(a) by conducting verification visits to the exporting Party to verify all or part of the exporting Party's control system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC; the expenses of such verification visits shall be borne by the Party carrying out the verification visit; and

(b) by information requests to the exporting Party about its control system and the results of the controls carried out under that system.

2. Each Party shall provide the other Party with the results and conclusions of the verification visits carried out in the territory of the other Party.

3. If the importing Party decides to carry out a verification visit to the exporting Party, it shall notify the exporting Party of this visit at least 60 working days before such verification visit is carried out, unless agreed otherwise. Any modification to this verification visit shall be mutually agreed by the Parties.

4. The importing Party shall provide a draft verification report to the exporting Party within 45 working days of the completion of the verifications. The exporting Party shall have 30 working days to comment on the draft report. Comments made by the exporting Party shall be attached to and, where appropriate, included in the final verification report which shall be delivered within 30 working days. If, during the verification, the importing Party identifies a significant human, animal or plant health risk, it shall inform the exporting Party as quickly as possible and in any case within 10 working days following the end of the verification.

ARTICLE 6.8

Procedure for Listing of Establishments

1. Upon request of the importing Party, the exporting Party shall inform the importing Party of its list of establishments which comply with the importing Party's requirements for approval and for which satisfactory sanitary guarantees have been provided in accordance with Annex 6-A (Requirement and Procedures for Approval of Establishments for Products).

2. Upon request of the exporting Party, the importing Party shall approve within 45 working days the list of establishments referred to in paragraph 1, without prior inspection of individual establishments.

3. If the importing Party requests additional information, the time-period referred to in paragraph 2 shall be extended by up to 30 working days. Following the approval of the list of establishment, the importing Party shall take necessary measures, in accordance with its applicable legal procedures, to allow the importation of products concerned.

4. If the importing Party rejects the request for approval, it should inform without delay the exporting Party of the reasons upon which that rejection was based.

ARTICLE 6.9

Measures linked to Animal and Plant Health

1. The Parties recognise the concepts of disease-free areas, areas of low disease prevalence, and compartmentalisation in accordance with the SPS Agreement and OIE standards, guidelines or recommendations. The Parties also recognise the animal health status as determined by the OIE.

2. The Parties recognise the concepts of pest-free areas, areas of low pest prevalence, protected zones and pest free production sites in accordance with the SPS Agreement and IPPC standards, guidelines or recommendations.

3. The Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of the SPS controls.

4. The SPS Committee shall define in further detail the procedure for the recognition of the concepts referred to in paragraphs 1 and 2 taking into account the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations.

5. When the importing Party assesses the self-determination of the animal or plant health status made by the exporting Party, it shall, in principle, base its own assessment of the animal or plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement and the OIE and IPPC standards, guidelines or recommendations. The importing Party shall endeavour to provide the exporting Party its decision without undue delay after the request for assessment.

6. If the importing Party does not accept the self-determination of the animal or plant health status made by the exporting Party, it shall explain the reasons and, upon request by the exporting Party, enter into consultations as soon as possible to reach an alternative solution.

7. The exporting Party shall provide relevant evidence in order to objectively demonstrate to the importing Party that the animal or plant health status of those areas is likely to remain unchanged. For that purpose, the exporting Party shall, upon request by the importing Party, give the importing Party reasonable access for inspection, testing and other relevant procedures.

ARTICLE 6.10

Equivalence

1. The Parties recognise that the application of equivalence in Article 4 of the SPS Agreement is an important tool for trade facilitation and has mutual benefits for both exporting and importing countries.

2. Equivalence can be accepted for a specific SPS measure or measures related to a certain product or categories of products, or on a systems-wide basis.

3. The importing Party shall accept the SPS measures and systems of the exporting Party as equivalent if the exporting Party objectively demonstrates 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, explain the objective of any relevant SPS measures to the other Party.

4. Within three months of the date of receipt by the importing Party of a request from the exporting Party, the Parties shall hold consultations in order to determine the equivalence of SPS measures and systems.

5. The importing Party shall make a determination of equivalence without undue delay after the exporting Party has demonstrated the equivalence of the proposed SPS measures and systems.

6. The importing Party shall accelerate the determination of equivalence in particular in respect of those products which it has historically imported from the exporting Party.

7. In case of multiple requests from the exporting Party, the Parties shall agree within the SPS Committee on a time schedule in which they shall initiate the process.

8. In accordance with Article 9 of the SPS Agreement, the importing Party shall give full consideration to the requests by the exporting Party for technical assistance to facilitate the implementation of this Article. This assistance may, *inter alia*, help to identify and implement measures which can be recognised as equivalent or to otherwise enhance market access.

9. The consideration by the importing Party of a request from the exporting Party for recognition of equivalence of its SPS measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of that product. When the importing Party has made an equivalence determination, the Parties shall formally record it and apply it without delay to trade between them in the relevant area.

ARTICLE 6.11

Committee on Sanitary and Phytosanitary Measures

1. The SPS Committee established pursuant to Article 17.2 (Specialised Committees) shall include representatives of the competent authorities of the Parties. All decisions made by the SPS Committee shall be by mutual agreement.

2. The SPS Committee shall meet in person within one year of the entry into force of this Agreement. It shall meet at least annually thereafter or as mutually determined by the Parties. It shall establish its rules of procedure at its first meeting. It shall meet in person, via teleconference, video-conference, or through other means as mutually agreed by the Parties.

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

4. The SPS Committee may address any matter related to the effective functioning of this Chapter, including facilitating communication and strengthening cooperation 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 in the 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, initiating and reviewing technical assistance projects and activities between the Parties; and

(f) carrying out any other function as mutually agreed between the Parties.

5. The Parties may, by decision in the SPS Committee, adopt recommendations and decisions related to the authorisation of imports, exchange of information, transparency, recognition of regionalisation, equivalence and alternative measures, and any other matter referred to under this Article.

ARTICLE 6.12

Transparency and Exchange of Information

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 the progress on new available scientific evidence, that affect, or may affect, trade between them with a view to minimising their negative trade effects;

(d) upon request of a Party, communicate the import requirements that apply to the import of a particular product within 15 working days of the date of receipt of the request; and

(e) upon request of a Party, communicate progress achieved in processing the application for the authorisation of a particular product within 15 working days of the date of receipt of the request.

2. When a Party has made the information available either by notification to the WTO in accordance with the relevant rules and procedures, or by publication on its official publicly and free of charge accessible websites, the exchange of information pursuant to subparagraphs (c), (d) and (e) of paragraph 1 shall not be required.

3. All notifications under this Chapter shall be made to the contact points referred to under Article 6.5 (Competent Authorities and Contact Points).

ARTICLE 6.13

Consultations

1. When a Party considers that an SPS measure affecting bilateral trade warrants further discussion, it may, through the contact points referred to under Article 6.5 (Competent Authorities and Contact Points), request full explanation and, if necessary, request consultations on that SPS measure. The other Party shall respond promptly to such requests.

2. The Parties shall make every effort to reach, within an agreed timeframe, a mutually acceptable solution through consultations. Should the consultations fail to resolve the matter, it shall be considered by the SPS Committee.

ARTICLE 6.14

Emergency Measures

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

2. Where a Party has serious concerns regarding a risk to human, animal or plant life or health affecting products for which trade between the Parties takes place, it may request consultations in accordance with Article 6.13 (Consultations). The consultations shall take place as soon as possible. Each Party shall endeavour to provide in due time all necessary information to avoid disruption in trade.

3. The importing Party may take, without previous notification, measures necessary to protect human, animal or plant life or health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.

4. The Party taking the measures shall inform the other Party as soon as possible and in any case no later than 24 hours after the adoption of the measure. Either Party may request any information related to the SPS situation and any measures adopted. The other Party shall reply as soon as the requested information is available.

5. Upon request of either Party and in accordance with Article 6.13 (Consultations) the Parties shall hold consultations regarding the situation within 10 working days of the notification referred to in paragraph 1. The consultations shall be held with a view to avoiding unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the SPS measures.

ARTICLE 6.15

Technical Assistance and Special and Differential Treatment

1. The Union should provide technical assistance to address specific needs of Viet Nam to comply with the Union's SPS measures, including food safety, animal and plant health, and the use of international standards.

2. In accordance with Article 10 of the SPS Agreement, in the case of new SPS measures, the Union shall take into account the special needs of Viet Nam so as to maintain the export opportunities of Viet Nam while continuing to achieve the Union's level of protection. The SPS Committee shall be consulted upon request by either Party to reflect on and decide about:

(a) longer timeframes for compliance;

(b) alternative import conditions in the context of equivalence; and

(c) technical assistance activities.

CHAPTER 7

NON-TARIFF BARRIERS TO TRADE AND INVESTMENT IN RENEWABLE ENERGY GENERATION

ARTICLE 7.1

Objectives

In line with global efforts to reduce greenhouse gas emissions, the Parties share the objectives of promoting, developing and increasing the generation of energy from renewable and sustainable sources, particularly through facilitating trade and investment. To this effect, the Parties shall cooperate towards removing or reducing non-tariff barriers and fostering cooperation, taking into account, where appropriate, regional and international standards.

ARTICLE 7.2

Definitions

For the purposes of this Chapter:

(a) "local content requirement" means:

(i) with respect to goods, a requirement for an enterprise to purchase or use goods of domestic origin or from a domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production;

(ii) with respect to services, a requirement which restricts the choice of the service supplier or the service supplied to the detriment of services or service suppliers from the other Party;

(b) "measures requiring to form a partnership with local companies" means any requirements to jointly establish or operate with local companies a legal person, a partnership according to domestic law, a joint venture or to jointly enter into contractual relations such as business cooperation contracts with local companies;

(c) "offset" means any undertaking that imposes the use of a local content requirement, local suppliers, technology transfer, investment, counter-trade or similar actions to encourage local development;

(d) "renewable and sustainable sources" means sources in the form of wind, solar, geothermal, hydrothermal, ocean energy, hydropower with capacity of 50 megawatt or less, biomass, landfill gas, sewage treatment plant gas or biogases; it does not encompass products from which energy is generated; and

(e) "service supplier" means any natural or legal person of a Party that supplies a service.

ARTICLE 7.3

Scope

1. This Chapter applies to measures which affect trade and investment between the Parties related to the generation of energy from renewable and sustainable sources.

2. This Chapter does not apply to research and development projects and to demonstration projects carried out on a non-commercial scale.

3. This Chapter does not apply to projects funded and governed by agreements with international organisations or foreign governments to which the procedures or conditions of those donors apply.

4. Subject to paragraph 5, this Chapter is without prejudice to the application of any other relevant provisions of this Agreement, including any exceptions, reservations or restrictions thereto, to the measures mentioned in paragraph 1, *mutatis mutandis*. For greater certainty, in the event of an inconsistency between this Chapter and other provisions of this Agreement, those provisions shall prevail to the extent of the inconsistency.

5. Paragraphs (a) and (b) of Article 7.4 (Principles) apply after five years from the date of entry into force of this Agreement.

ARTICLE 7.4

Principles

A Party shall:

(a) refrain from adopting measures providing for local content requirements or any other offset affecting the other Party's products, service suppliers, investors or enterprises;

(b) refrain from adopting measures requiring to form partnerships with local companies, unless those partnerships are deemed necessary for technical reasons and that Party can demonstrate those reasons upon request of the other Party;

(c) ensure that any measures concerning the authorisation, certification and licensing procedures that are applied, in particular, to equipment, plants and associated transmission network infrastructures, are objective, transparent, non-arbitrary and do not discriminate amongst applicants from the Parties;

(d) ensure that administrative fees and charges imposed on or in connection with the:

(i) importation and use of products originating in the other Party, by the other Party's suppliers are subject to Articles 2.16 (Administrative Fees, Other Charges, and Formalities on Imports and Exports) and 4.10 (Fees and Charges); and

(ii) provision of services by the other Party's suppliers are subject to Articles 8.19 (Scope and Definitions), 8.20 (Conditions for Licensing and Qualification) and 8.21 (Licensing and Qualification Procedures); and

(e) ensure that the terms, conditions and procedures for the connection and access to electricity transmission grids are transparent and do not discriminate against suppliers of the other Party.

ARTICLE 7.5

Standards, Technical Regulations and Conformity Assessment

1. This Article applies to the products covered by the tariff headings listed in Annex 7-A (List of Tariff Headings). The Parties may agree to include other products in this list by exchange of letters.

2. If relevant international standards established by the International Organization for Standardization or the International Electrotechnical Commission exist, the Parties shall use those international standards, or their relevant parts, as a basis for any standard, technical regulation or conformity assessment procedure, except when those international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. In those cases, a Party shall, upon request of the other Party, identify the part of the respective standard, technical regulation or conformity assessment procedure which substantially deviate from the relevant international standard and provide justification as to the reasons for the deviation.

3. If appropriate, the Parties shall specify technical regulations based on product requirements in terms of performance, including safety and environmental performance, rather than design or descriptive characteristics.

4. A Party accepting a supplier's declaration of conformity as a positive assurance of conformity shall endeavour not to require the submission of test results.

5. If a Party requires test reports, whether alone, as the basis of, or in conjunction with other assurances of conformity, or as positive assurance that a product is in conformity with its relevant standards or technical regulations, it shall endeavour to accept test reports in form of the International Electrotechnical Commission System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE CB Scheme) Test Reports without requiring any further testing.

6. If a Party requires third party's certification for product, it shall endeavour to accept a valid CB Test Certificate under the IECEE CB Scheme as sufficient assurance of conformity without requiring any further conformity assessment or administrative procedures or approvals.

7. This Article is without prejudice to the Parties applying requirements not related to the products in question, such as zoning laws or building codes.

ARTICLE 7.6

Exceptions

1. This Chapter is subject to Articles 2.22 (General Exceptions), 8.54 (General Exceptions) and 9.3 (Security and General Exceptions).

2. Nothing in this Chapter shall be construed as preventing a Party from adopting or enforcing measures necessary for the safe operation of the energy networks concerned, or the safety of the energy supply, subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties' products, service suppliers or investors under like circumstances, or a disguised restriction on trade and investment between the Parties.

ARTICLE 7.7

Implementation and Cooperation

1. The Parties shall cooperate and exchange information on any issues relating to the implementation of this Chapter in the relevant specialised committees established pursuant to Article 17.2 (Specialised Committees). The Trade Committee may decide to adopt appropriate implementing measures to this effect.

2. The Parties shall exchange information, regulatory experiences and best practices in areas such as:

(a) the design and non-discriminatory implementation of measures promoting the use of energy from renewable sources;

(b) technical regulations, standards and conformity assessment procedures, such as those relating to grid code requirements.

3. The Parties shall promote cooperation, with respect to domestic or regional technical regulations, regulatory concepts, standards, requirements and conformity assessment procedures which comply with international standards, in relevant regional *fora*.

CHAPTER 8

LIBERALISATION OF INVESTMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

SECTION A

GENERAL PROVISIONS

ARTICLE 8.1

Objectives and Scope

1. The Parties, affirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive liberalisation of investment and trade in services and for cooperation on electronic commerce.

2. Consistent with the provisions of this Chapter, each Party retains the right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as the protection of the environment and public health, social policy, the integrity and stability of the financial system, the promotion of security and safety, and the promotion and protection of cultural diversity.

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

4. Nothing in this Chapter 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.

5. Nothing in this Chapter shall be construed as limiting the obligations of the Parties under Chapter 9 (Government Procurement) or to impose any additional obligation relating to government procurement.

6. This Chapter does not apply to subsidies granted by the Parties[2], except for Article 8.8 (Performance Requirements).

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[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.

[2] In the case of the Union, "subsidy" includes "state aid" as defined in the Union's law. For Viet Nam, "subsidy" includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

7. A Party's decision not to issue, renew or maintain a subsidy or grant, shall not constitute a breach of Article 8.8 (Performance Requirements), in the following circumstances:

(a) in the absence of any of the Party's specific commitments to the investor under law or contract to issue, renew, or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy or grant.

8. This Chapter does not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

ARTICLE 8.2

Definitions

1. For the purposes of this Chapter:

(a) "aircraft repair and maintenance services during which an aircraft is withdrawn from service" 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;

(b) "computer reservation system (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;

(c) "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;

(d) "economic activities" include activities of an industrial, commercial and professional character and activities of craftsmen, but do not include activities performed in the exercise of governmental authority;

(e) "enterprise" means a juridical person, branch[1] or representative office set up through establishment;

(f) "establishment" means the setting up, including the acquisition, of a juridical person or creation of a branch or a representative office in the Union or in Viet Nam, respectively[2], with a view to establishing or maintaining lasting economic links;

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[1] For greater certainty, a branch of a legal entity of a third country shall not be considered as an enterprise of a Party.

[2] For greater certainty, this does not include the operation of an enterprise as defined in subparagraph (m).

(g) "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;

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

(i) "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, an investor that "seeks to establish" an enterprise refers to an investor of a Party that has taken active steps to establish an enterprise in the territory of the other Party, such as channelling resources or capital in order to set up a business, or applying for a permit or license.

(j) "juridical person of a Party" means a juridical person of the Union or a juridical person of Viet Nam, set up in accordance with the domestic laws and regulations of the Union or its Member States, or of Viet Nam, respectively, and engaged in substantive business operations[1] in the territory of the Union or of Viet Nam, respectively;

(k) "measures adopted or maintained by a Party" means measures taken by:

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

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

(l) "natural person" means a natural person of a Party as defined in subparagraph (h) of Article 1.5;

[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 of the Union enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws and regulations of Viet Nam and having only its registered office or central administration in the territory of Viet Nam, the Union shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the territory of Viet Nam.

(m) "operation" means, with respect to an enterprise, the conduct, management, maintenance, use, enjoyment, sale or other forms of disposal of the enterprise;[1]

(n) "selling and marketing of air transport services" means opportunities for the air carrier concerned to freely sell and market its air transport services, including all aspects of marketing such as market research, advertising and distribution; those activities do not include the pricing of air transport services nor the applicable conditions;

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

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

(q) "service supplier" of a Party means any natural or juridical person of a Party that supplies a service; and

[1] For greater certainty, this does not include steps taking place at the time of or before the procedures required for setting up the related enterprise are completed in accordance with the applicable laws and regulations.

(r) "subsidiary" of a juridical person of a Party means a juridical person which is controlled by another juridical person of that Party in accordance with its domestic laws and regulations.[1]

2. A juridical person is:

(a) "owned" by natural or juridical persons of one of the Parties if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party; or

(b) "controlled" by natural or juridical persons of one of the Parties if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

3. Notwithstanding the definition of a "juridical person of a Party" in subparagraph 1(j), shipping companies established outside the Union or Viet Nam and controlled by nationals of a Member State of the Union or of Vietnam, respectively, shall also be covered by this Chapter if their vessels are registered in accordance with the respective domestic laws and regulations in a Member State or in Viet Nam and fly the flag of that Member State or of Viet Nam, respectively.

[1] For greater certainty, a subsidiary of a juridical person of a Party may also refer to a juridical person which is a subsidiary of another subsidiary of a juridical person of that Party.

SECTION B

LIBERALISATION OF INVESTMENT

ARTICLE 8.3

Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment or the operation of an enterprise by an investor of the other Party in the territory of the Party that adopts or maintains those measures.

2. This Section does not apply to:

(a) audio-visual services;

(b) mining, manufacturing and processing[1] of nuclear materials;

(c) production of or trade in arms, munitions and war material;

[1] For greater certainty, processing of nuclear materials includes all the activities contained in the *International Standard Industrial Classification of all Economic Activities* as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N 4, ISIC REV 3.1, 2002 code 2330.

(d) national maritime cabotage;[1]

(e) 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;

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

(iii) computer reservation system (CRS) services; and

(iv) ground handling services;

and

(f) services supplied and activities performed in the exercise of governmental authority.

[1] Without prejudice to the scope of activities which constitute cabotage under domestic laws and regulations, national maritime cabotage under this Section covers transportation of passengers or goods between a port or point located in a Member State of the Union or in Viet Nam and another port or point located in that same Member State of the Union or Viet Nam, including on its continental shelf, as provided for in UNCLOS, and traffic originating and terminating in the same port or point located in a Member State of the Union or Viet Nam.

ARTICLE 8.4

Market Access

1. With respect to market access through establishment and maintenance of an enterprise, each Party shall accord treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) or 8-B (Viet Nam's Schedule of Specific Commitments), respectively.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) or 8-B (Viet Nam's Schedule of Specific Commitments), respectively, are defined as:

(a) limitations on the number of enterprises that may perform a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;

(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 operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(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 ventures through which an investor of the other Party may perform an economic activity; and

(f) limitations on the total number of natural persons that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 8.5

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) or 8-B (Viet Nam's Schedule of Specific Commitments) and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to their enterprises, with respect to establishment in its territory, treatment no less favourable than that accorded, in like situations, to its own investors and to their enterprises.

2. A Party shall accord to investors of the other Party and to their enterprises[1], with respect to the operation of those enterprises, treatment no less favourable than that accorded, in like situations, to its own investors and to their enterprises.

[1] For the purposes of this paragraph and Article 8.6 (Most-Favoured-Nation Treatment), "their enterprises" means enterprises of investors of a Party in existence in the territory of the other Party on the date of entry into force of this Agreement, or set up or acquired thereafter, that have been established in accordance with that other Party's applicable laws and regulations.

3. Notwithstanding paragraph 2 and, in the case of Viet Nam subject to Annex 8-C (Exemption for Viet Nam on National Treatment), a Party may adopt or maintain any measure with respect to the operation of an enterprise provided that such measure is not inconsistent with the commitments set out in Annexes 8-A (The Union's Schedule of Specific Commitments) and 8-B (Viet Nam's Schedule of Specific Commitments), respectively, where such measure is:

(a) a measure that is adopted on or before the date of entry into force of this Agreement;

(b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the date of entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 after it is continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

(c) a measure not falling within subparagraphs (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage to, enterprises established in the territory of the Party before the date of entry into force of such measure.[1]

[1] For the purposes of this subparagraph, the Parties understand that if a Party has provided for a reasonable phase-in period for the implementation of a measure or if that Party has made any other attempt to address the effects of the measure on enterprises established before the date of entry into force of the measure, those factors shall be taken into account in determining whether the measure causes loss or damage to enterprises made before the date of entry into force of the measure.

ARTICLE 8.6

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party and to their enterprises as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors of a third country and their enterprises.

2. Paragraph 1 does not apply to the following sectors:

(a) communication services, except for postal services and telecommunication services;

(b) recreational, cultural and sporting services;

(c) fishery and aquaculture;

(d) forestry and hunting; and

(e) mining, including oil and gas.

3. Paragraph 1 shall not be construed as obliging a Party to extend to the investors of the other Party or their enterprises the benefit of any treatment granted pursuant to any bilateral, regional or multilateral agreement that entered into force before the date of entry into force of this Agreement.

4. Paragraph 1 shall not be construed as obliging a Party to extend to the investors of the other Party or their enterprises the benefit of:

(a) any treatment granted pursuant to any bilateral, regional or multilateral agreement which includes commitments to abolish substantially all barriers to the operation of enterprises among the parties or requires the approximation of legislation of the parties in one or more economic sectors;[1]

(b) any treatment resulting from any international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or

(c) any treatment resulting from measures providing for the recognition of qualifications, licences or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services.

5. For greater certainty, the "treatment" referred to in paragraph 1 does not include dispute resolution procedures or mechanisms, such as resolution of investment disputes between investors and states, provided for in any other bilateral, regional or multilateral agreements. Substantive obligations in such agreements do not in themselves constitute "treatment" and thus cannot be taken into account when assessing a breach of this Article. Measures by a Party pursuant to those substantive obligations shall be considered "treatment".

[1] For greater certainty, the ASEAN Economic Community falls within the concept of a regional agreement under this subparagraph.

6. This Article shall be interpreted in accordance with the principle of *ejusdem generis*.[1]

ARTICLE 8.7

Schedule of Specific Commitments

The sectors liberalised by each Party pursuant to this Sub-Section and the terms, limitations, conditions and qualifications referred to in Articles 8.4 (Market Access), 8.5 (National Treatment) and 8.8 (Performance Requirements) are set out in Annexes 8-A (The Union's Schedule of Specific Commitments) or 8-B (Viet Nam's Schedule of Specific Commitments), respectively.

[1] For greater certainty, this paragraph shall not be construed as preventing the interpretation of other provisions of this Agreement, where appropriate, in accordance with the principle of *ejusdem generis.*

ARTICLE 8.8

Performance Requirements

1. In the sectors inscribed in its respective Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) and 8-B (Viet Nam's Schedule of Specific Commitments) and subject to any conditions and qualifications set out therein, a Party shall not impose or enforce any of the following requirements which are mandatory or enforceable under domestic law or under administrative rulings, in connection with the establishment or operation of any enterprises of investors of a Party or of a third country in its territory to:

(a) export a given level or percentage of goods or services;

(b) achieve a given level or percentage of domestic content;

(c) 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;

(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 such 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 enterprises in its territory; or

(g) supply exclusively from the territory of the Party a good produced or a service provided by the enterprise to a specific regional or world market.

2. In the sectors inscribed in its respective Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) and 8-B (Viet Nam's Schedule of Specific Commitments) and subject to any conditions and qualifications set out therein, a Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise of an investor of a Party or of a third country in its territory, on compliance with any of the following requirements to:

(a) achieve a given level or percentage of domestic content;

(b) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) 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 such enterprise; or

(d) 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.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage in connection with any enterprise in its territory on 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. Subparagraph 1(f) shall not be construed as preventing the application of a requirement imposed or a commitment or undertaking enforced by a court, administrative tribunal or competition authority, in order to remedy an alleged violation of competition laws.

5. Subparagraphs 1(a) to 1(c), 2(a) and 2(b) do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. For greater certainty, subparagraphs 2(a) and 2(b) 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.

7. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

8. This Article does not apply to measures adopted or maintained by a Party in accordance with subparagraph 8(b) of Article III of GATT 1994.

SECTION C

CROSS-BORDER SUPPLY OF SERVICES

ARTICLE 8.9

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

[1] Without prejudice to the scope of activities which constitute cabotage under the domestic laws and regulations, national maritime cabotage under this Section covers transportation of passengers or goods between a port or point located in Viet Nam or a Member State of the Union and another port or point located in Viet Nam or that same Member State of the Union, including on its continental shelf, as provided in UNCLOS, and traffic originating and terminating in the same port or point located in Viet Nam or a Member State of the Union.

(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;

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

(iii) computer reservation system (CRS) services; and

(iv) ground handling services.

ARTICLE 8.10

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.

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

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

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

(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.

ARTICLE 8.11

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of 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 service 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. Specific commitments assumed under this Article shall not be construed as requiring any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

ARTICLE 8.12

Schedule of Specific Commitments

The sectors liberalised by each Party pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 8.10 (Market Access) and 8.11 (National Treatment) are set out in its Schedule of Specific Commitments included in Appendix 8-A-1 of Annex 8-A (The Union's Schedule of Specific Commitments) or Appendix 8-B-1 of Annex 8-B (Viet Nam's Schedule of Specific Commitments), respectively.

SECTION D

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 8.13

Scope and Definitions

1. This Section applies to measures of a Party concerning the entry and temporary stay in its territory of business visitors, intra-corporate-transferees, business sellers, contractual service suppliers and independent professionals.

2. For the purposes of this Section:

(a) "business sellers" means natural persons who are representatives of a supplier of goods or services of a Party seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier and who do not engage in supplying the services or the goods; they do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party, nor are they commission agents;

(b) "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 such juridical person, provided they do not offer or provide services or engage in any other economic activity than required for establishment purposes and they do not receive remuneration from a source located within the host Party;

(c) "contractual services suppliers" means natural persons employed by a juridical person of a Party which is not an agency for placement and supply services of personnel nor acting through such an agency, which has not been established in the territory of the other Party and which has concluded a *bona fide* contract[1] to supply services with 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 provide services;

(d) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have not been established in the territory of the other Party and who have concluded a *bona fide* contract[2] other than through an agency for placement and supply services of personnel to supply services with a final consumer in the other Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services;

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[1] The service contract shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

[2] The service contract shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

(e) "intra-corporate transferees" means natural persons who have been employed by a juridical person 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, provided that the natural person concerned belongs to the categories of managers or executives, specialists or trainee employees;

(f) "managers or executives" means natural persons working in a senior position within a juridical person of a Party, who primarily direct the management of the enterprise[1] in the other Party, and who are receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:

(i) directing the enterprise or a department or sub-division thereof;

(ii) supervising and controlling the work of other supervisory, professional or managerial employees; and

(iii) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

[1] For greater certainty, while managers or executives do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties, from performing such tasks as may be necessary for the provision of the services.

(g) "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;

(h) "specialists" means natural persons working within a juridical person possessing specialised knowledge essential to the establishments' areas of activity, techniques or management; in assessing such knowledge, account shall be taken not only of knowledge specific to the establishment, 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; and

(i) "trainee employees" means natural persons who have been employed by a juridical person or its branch for at least one year, and who possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods.[1]

[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 Czech Republic, Germany, Spain, France, Hungary, and Austria, training must be linked to the university degree which has been obtained.

ARTICLE 8.14

Business Visitors and Intra-Corporate Transferees

1. For the sectors liberalised in accordance with Section B (Liberalisation of Investment), each Party shall allow investors of the other Party to employ in their enterprises natural persons of that other Party provided that such employees are business visitors or intra-corporate transferees.[1]

2. The entry and temporary stay shall be:

(a) for managers or executives, a period of up to three years;

(b) for specialists, a period of up to three years;

(c) for trainee employees, a period of up to one year; and

(d) for business visitors for establishment purposes, a period of up to 90 days[2].

[1] For Viet Nam, the obligations stemming from this Section in relation to trainee employees shall enter into force three years after the date of entry into force of this Agreement.

[2] For the Union, the period of up to 90 days has to be within any 12 month period.

3. For every sector liberalised in accordance with Section B (Liberalisation of Investment), a Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, limitations on the total number of natural persons that an investor may employ as business visitors for establishment purposes and intra-corporate transferees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations, unless otherwise specified in Appendix 8-A-3 of Annex 8-A (The Union's Schedule of Specific Commitments) and Appendix 8-B-2 of Annex 8-B (Viet Nam's Schedule of Specific Commitments, respectively.

ARTICLE 8.15

Business Sellers

For every sector liberalised in accordance with Section B (Liberalisation of Investment) or Section C (Cross-Border Supply of Services) and subject to any reservations listed in Appendix 8-A-3 of Annex 8-A (The Union's Schedule of Specific Commitments) and Appendix 8-B-2 of Annex 8-B (Viet Nam's Schedule of Specific Commitments), respectively, each Party shall allow the entry and temporary stay of business sellers for a period of up to 90 days[1].

[1] For the Union, the period of up to 90 days has to be within any 12 month period.

ARTICLE 8.16

Contractual Service Suppliers

1. The Parties affirm their respective obligations arising from their commitments under GATS with respect to the entry and temporary stay of contractual services suppliers.

2. Each Party shall allow the supply of services into its territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 3 and any reservations listed in Appendix 8-A-3 of Annex 8-A (The Union's Schedule of Specific Commitments) and Appendix 8-B-2 of Annex 8-B (Viet Nam's Schedule of Specific Commitments), respectively, for the following sectors or sub-sectors:

(a) architectural services;

(b) urban planning and landscape architecture services;

(c) engineering services;

(d) integrated engineering services;

(e) computer and related services;

(f) higher education services (only privately funded services);

(g) foreign language training; and

(h) environmental services.

3. The commitments undertaken by the Parties are subject to the following conditions:

(a) the natural persons shall 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 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, in addition, the natural persons shall possess, at the date of submission of an application for entry into the other Party, at least five years professional experience[1] in the sector of activity which is the subject of the contract;

[1] For greater certainty, this period is calculated after the natural persons have reached the age of majority.

(c) the natural persons entering the other Party shall possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[1]; and

(ii) professional qualifications in the case that this is required to exercise an activity pursuant to the laws, 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 cumulative period of not more than six months[2] or for the duration of the contract, whichever is less;

(f) access accorded under 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;

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[1] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this degree or qualification is equivalent to a university degree required in its territory.

[2] For the Union, the cumulative period of not more than six months has to be within any 12 month period.

(g) the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as may be required by the laws and regulations or other measures of the Party where the service is supplied; and

(h) other discriminatory limitations, including on the number of natural persons in the form of an economic needs test, specified in Appendix 8-A-3 of Annex 8-A (The Union's Schedule of Specific Commitments) and Appendix 8-B-2 of Annex 8-B (Viet Nam's Schedule of Specific Commitments).

ARTICLE 8.17

Independent Professionals

Five years after the date of entry into force of this Agreement, the Parties shall review this Section to consider establishing the modalities to extend the provisions therein to independent professionals.

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 1

DOMESTIC REGULATION

ARTICLE 8.18

Scope and Definitions

1. This Sub-Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures that affect:

(a) cross-border supply of services;

(b) establishment and maintenance of juridical or natural persons; and

(c) temporary stay in their respective territories of categories of natural persons.

2. This Sub-Section only applies to sectors for which a Party has undertaken specific commitments and to the extent that these specific commitments apply.

3. This Sub-Section does not apply to measures to the extent that they constitute limitations as scheduled under Articles 8.4 (Market Access), 8.5 (National Treatment), 8.10 (Market Access) or 8.11 (National Treatment).

4. For the purposes of this 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 or 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) "licensing 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 licensing requirements;

(c) "licensing requirements" means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to carry out the activities as referred to in paragraph 1;

(d) "qualification procedures" means administrative or procedural rules to which a natural person must adhere 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 purposes of obtaining authorisation to supply a service.

ARTICLE 8.19

Conditions Licensing and Qualification

1. Each Party shall ensure that measures relating to licensing requirements and procedures, as well as qualification requirements and procedures are based on criteria which are:

(a) clear;

(b) objective and transparent; and

(c) pre-established and accessible to the public and interested persons.

2. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, on the basis of an appropriate examination that the conditions for obtaining an authorisation or licence have been met.

3. 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 authority entrusted with the administrative decision concerned, each Party shall ensure that the procedures provide for an objective and impartial review.

This paragraph shall not be construed as requiring a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

ARTICLE 8.20

Licensing and Qualification Procedures

1. Licensing and qualification procedures and formalities 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 licensing fees[1] which the applicants may incur from their applications should be reasonable and shall not in themselves restrict the supply of the relevant service.

2. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decisions 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.

3. In case specific time periods for applications exist in each Party's laws and regulations, an applicant shall be allowed a reasonable period of time for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

[1] Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

4. Each Party shall ensure that the processing of an application, including the reaching of a final decision, is completed within a reasonable timeframe after the date of the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing an application.

5. The competent authority shall inform the applicant within a reasonable period of time after the receipt of an application which it considers incomplete, identify, to the extent feasible, the additional information required to complete the application, and provide the opportunity to correct deficiencies.

6. Authenticated copies should be accepted, whenever possible, in place of original documents.

7. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon formal request, also be informed of the reasons for rejection of the application. An applicant should be permitted, within reasonable time limits, to resubmit an application.

8. 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.

SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 8.21

Mutual Recognition of Professional Qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications and professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. 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 Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement established pursuant to Article 17.2 (Specialised Committees). Such a joint recommendation shall be supported by evidence of:

(a) the economic value of an envisaged agreement on mutual recognition of professional qualifications (hereinafter referred to as "Mutual Recognition Agreement"); and

(b) the compatibility of the respective regimes, such as the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible.

3. Upon receipt of a joint recommendation, the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement shall, within a reasonable period of time, review the joint recommendation with a view to determining whether it is consistent with this Agreement.

4. Where, on the basis of the information provided for in paragraph 2, the joint recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement.

SUB-SECTION 3

COMPUTER SERVICES

ARTICLE 8.22

Understanding on Computer Services

1. To the extent that trade in computer services is liberalised in accordance with Section B (Liberalisation of Investment), Section C (Cross-Border Supply of Services) and Section D (Temporary Presence of Natural Persons for Business Purposes), the Parties shall comply with paragraphs 2 to 4.

2. The Parties understand that CPC[1] 84 which is the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

[1] CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:

(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) 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 programmes;

(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, relating to computer programmes, computers or computer systems, and not elsewhere classified.

4. The Parties understand that, in many cases, computer and related services enable the provision of other services[1] by both electronic and other means. In these cases, it is important to distinguish between the computer and related services, such as web-hosting or application hosting, and the other service enabled by the computer and related service. The other service, regardless of whether it is enabled by a computer and related service, is not covered by CPC 84.

SUB-SECTION 4

POSTAL SERVICES[2]

ARTICLE 8.23

Prevention of Anti-Competitive Practices in the Postal Services Sector

Each Party shall maintain or introduce appropriate measures for the purposes of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation in the relevant markets for postal services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

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[1] E.g., W/120.1.A.b. (accounting, auditing and bookkeeping services), W/120.1.A.d (architectural services), W/120.1.A.h (medical and dental services), W/120.2.D (audiovisual services), W/120.5. (educational services).

[2] This Sub-Section applies to both CPC 7511 and CPC 7512.

ARTICLE 8.24

Licences

1. Where a Party requires a licence for providing postal services, it shall make publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of such licence.

2. The reasons for the denial of a licence shall be made known to the applicant upon request and an appeal procedure through a relevant regulatory body shall be established by each Party. The appeal procedure shall be transparent, non-discriminatory and based on objective criteria.

ARTICLE 8.25

Postal Regulatory Authority

The regulatory body shall be separate from, and not accountable to, any supplier of postal services. The decisions of, and the procedures used by the regulatory body shall be impartial with respect to all market participants.

SUB-SECTION 5

TELECOMMUNICATIONS NETWORKS AND SERVICES

ARTICLE 8.26

Scope

1. This Sub-Section sets out principles of the regulatory framework for the provision of public telecommunications networks and services, liberalised pursuant to Section B (Liberalisation of Investment), Section C (Cross-Border Supply of Services) and Section D (Temporary Presence of Natural Persons for Business Purposes).

2. This Sub-Section does not apply to any measure adopted or maintained by a Party relating to broadcasting[1] or cable distribution of radio or television programming.

[1] "Broadcasting" shall be defined as provided for in the relevant laws and regulations of each Party. For greater certainty, broadcasting does not cover contribution links between operators.

ARTICLE 8.27

Definitions

For the purposes of this Sub-Section:

(a) "end user" means a final service consumer or a final service supplier to whom a public telecommunications network or service is supplied, other than for use in the further supply of a public telecommunications network or service;

(b) "essential facilities" means facilities of a public telecommunications network and 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 with suppliers providing public telecommunications transport service in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

(d) "major supplier" means a supplier of public telecommunications services which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications services as a result of control over essential facilities or use of its position in the market;

(e) "number portability" means the ability of end users of public telecommunications services who so request to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

(f) "public telecommunications network" means a telecommunications network which a Party requires to provide public telecommunications services between defined network termination points;

(g) "public telecommunications service" means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally;

(h) "regulatory authority" in the telecommunications sector means the body or bodies charged by a Party with the regulation of telecommunications;

(i) "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 conveyance of signals by wire, radio, optical, or other electromagnetic means;

(j) "telecommunications services" means all services consisting of the transmission and reception of electro-magnetic signals but excludes broadcasting services and economic activities consisting of the provision of content which requires telecommunications for its transport; and

(k) "user" means a service consumer or a service supplier.

ARTICLE 8.28

Regulatory Authority

1. The regulatory authority shall be separate from, and not accountable to, any supplier of public telecommunications networks or services.

2. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants. To that end, a Party that retains ownership or control of providers of telecommunications networks or services shall ensure that regulatory actions, decisions or measures taken by the regulatory authority with respect to such providers do not discriminate against and, as a result, materially disadvantage any of their competitors.

3. The regulatory authority shall be sufficiently empowered to regulate the sector, and have adequate financial and human resources to carry out the tasks assigned to it.

4. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular when those tasks are assigned to more than one body.

5. The powers of the regulatory authority shall be exercised transparently and in a timely manner.

6. Regulatory authorities shall have the power to ensure that suppliers of telecommunications networks and services provide them, promptly upon request, with all the information, including financial information, which is necessary to enable the regulatory authorities to carry out their tasks in accordance with this Sub-Section. The information requested shall be no more than is necessary to allow the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality.

ARTICLE 8.29

Authorisation to Provide Telecommunications Networks and Services

1. Each Party shall ensure that licensing procedures should be publicly available, including:

(a) all the licensing criteria, terms, conditions and procedures it applies; and

(b) a reasonable period of time normally required to reach a decision concerning an application for a licence.

2. Each Party shall ensure that an applicant receives in writing, upon request, the reasons for the denial of a licence.

3. The applicant for a licence shall be able to seek recourse before an appeal body in case a licence has been denied.

4. Any licensing fees[1] which the applicants may incur from their application to get a licence shall be reasonable and shall not in themselves restrict the supply of the service.

ARTICLE 8.30

Scarce Resources

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.

2. The current state of allocated frequency bands shall be made publicly available but detailed identification of radio spectrum allocated for specific government uses shall not be required.

[1] Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

3. Decisions on allocating and assigning spectrum and frequency management are not measures that are *per se* inconsistent with Article 8.4 (Market Access), Article 8.8 (Performance Requirements) and 8.10 (Market Access). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with this Chapter. The Parties also retain the right to allocate frequency bands in a manner that takes into account existing and future needs.

ARTICLE 8.31

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that all service suppliers of the other Party have access to, and use of, any public telecommunications network and service of a major supplier[1], including private leased circuits, offered within or across the borders of that Party on reasonable, non-discriminatory and transparent terms and conditions, including as set out in paragraphs 2 and 3.

[1] For the purposes of this Article, the designation of a supplier of public telecommunications networks and services as a major supplier shall be in accordance with the domestic laws, regulations and procedures of each Party.

2. Each Party shall ensure that suppliers of public telecommunications services requesting to have access to the network of a major supplier are permitted to:

(a) purchase or lease, and attach terminal or other equipment which interfaces with the public telecommunications network;

(b) interconnect private leased or owned circuits with public telecommunications networks and services in its territory, or across its borders, or with circuits leased or owned by other service suppliers; and

(c) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

3. Each Party shall ensure that all service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party. Any new or amended measures of a Party significantly affecting such use shall be notified to the other Party and shall be subject to consultations.

4. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating access use that information solely for the purpose for which it was supplied and at all times respect the confidentiality of information transmitted or stored.

ARTICLE 8.32

Interconnection

1. Each Party shall ensure that any suppliers of public telecommunications services shall have the right, and when requested by another supplier, the obligation, to negotiate interconnection with each other for the purposes of providing public telecommunications networks and services.

2. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and at all times respect the confidentiality of information transmitted or stored.

3. For public telecommunications services, each Party shall ensure interconnection with a major[1] supplier at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including in relation to technical standards, specifications) and rates, and of a quality no less favourable than that provided for such major supplier's own like services, or for like services of non-affiliated suppliers, or for its subsidiaries or other affiliates;

[1] For the purposes of this Article, the designation of a supplier of public telecommunications networks and services as a major supplier shall be in accordance with the domestic laws, regulations and procedures of each Party.

(b) in a timely fashion, on terms, conditions (including in relation to technical standards, specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. The procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where appropriate.

ARTICLE 8.33

Competitive Safeguards on Major Suppliers

The Parties shall introduce or maintain appropriate measures for the purposes of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices in their territories 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 services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 8.34

Universal Service

1. Each Party shall have the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

2. The designation of universal service suppliers shall be made through an efficient, transparent and non-discriminatory mechanism.

ARTICLE 8.35

Number Portability

Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide number portability for mobile services and any other services designated by that Party, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

ARTICLE 8.36

Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunications network and publicly available telecommunications services without restricting trade in services.

ARTICLE 8.37

Resolution of Telecommunications Disputes

1. In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Sub-Section, the regulatory authority concerned shall, at the request of either party concerned, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within a reasonable period of time, except in exceptional circumstances.

2. Where a dispute referred to in paragraph 1 concerns the cross-border provision of services, the regulatory authorities concerned shall coordinate their efforts in order to induce a resolution of the dispute.

3. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right to appeal that decision in accordance with paragraph 5.

4. The procedure referred to in paragraphs 1, 2 and 3 shall not preclude either party concerned from bringing an action before the courts.

5. Any user or supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the party involved. This body, which may be a court, shall have the appropriate expertise to carry out its functions effectively. The merits of the case shall be duly taken into account and the appeal mechanism shall be effective. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced. Pending the outcome of the appeal, the decision of the regulatory authority shall stand, unless interim measures are granted in accordance with the domestic laws and regulations.

ARTICLE 8.38

Co-location

1. Each Party shall ensure that major suppliers in its territory:

(a) provide to suppliers of public telecommunications networks or services of the other Party that are facilities-based suppliers in the territory of that Party, physical co-location of equipment necessary for interconnection; and

(b) in situations where physical co-location referred to in subparagraph (a) is not practical for technical reasons or because of space limitations, cooperate with suppliers of public telecommunications networks or services of the other Party that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution.

2. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services the physical co-location or practical and commercially viable alternative solution referred to in paragraph 1 in a timely manner and on terms and conditions, including technical standards and specifications, and at rates that are reasonable having regard to economic feasibility, non-discriminatory and transparent.

3. Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in paragraph 1.

ARTICLE 8.39

Leased Circuits Services

Each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services that are public telecommunications services, available to suppliers of public telecommunications networks or services of the other Party in a timely manner and on terms and conditions (including technical standards and specifications), and at rates that are reasonable having regard to economic feasibility, non-discriminatory and transparent.

ARTICLE 8.40

Unbundled Network Elements

Each Party shall ensure that their telecommunications regulatory authority has the power to require major suppliers to meet reasonable requests by suppliers of public telecommunications networks or services for access to, and use of, specific network elements, on an unbundled basis, in a timely manner and on terms and conditions that are reasonable, transparent, and non-discriminatory. Each Party shall determine such specific network elements requested to be made available in its territory in accordance with its domestic laws and regulations.

SUB-SECTION 6

FINANCIAL SERVICES

ARTICLE 8.41

Scope and Definitions

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Section B (Liberalisation of Investment), Section C (Cross-Border Supply of Services) and Section D (Temporary Presence of Natural Persons for Business Purposes).

2. For the purposes of this Sub-Section:

(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):

(1) life; and

(2) 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;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, of the following:

(1) money market instruments (including cheques, bills, certificates of deposits);

(2) foreign exchange;

(3) derivative products including, but not limited to, futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(5) transferable securities; and

(6) 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 relating to such issues;

(H) money broking;

(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 the provision of related software by suppliers of other financial service; and

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs 2(a)(ii)(A) to 2(a)(ii)(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 but does not include a public entity;

(c) "new financial service" means a service of a financial nature including services relating to existing and new products or the manner in which a product is delivered, which is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

(d) "public entity" 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, not including 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;

and

(e) "self-regulatory organisation" means any non-governmental body, 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.

ARTICLE 8.42

Prudential Carve-Out

1. Nothing in this Agreement shall be construed to 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. The measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim.

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.

4. Each Party shall endeavour to ensure that internationally agreed standards for regulation and supervision in financial services and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the *Core Principle for Effective Banking Supervision* of the Basel Committee, the *Insurance Core Principles* of the International Association of Insurance Supervisors, the *Objectives and Principles of Securities Regulation* of the International Organization of Securities Commissions, the *Agreement on Exchange of Information on Tax Matters* of the Organisation for Economic Cooperation and Development, the *Statement on Transparency and Exchange of Information for Tax Purposes* of the G20 and the *Forty Recommendations on Money Laundering* and the *Nine Special recommendations on Terrorist Financing* of the Financial Action Task Force.

5. The Parties take note of the *Ten Key Principles for Information Exchange* promulgated by the Finance Ministers of the G7 Nations.

6. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

ARTICLE 8.43

Transparent Regulation

Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

Upon 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, it shall notify the applicant without undue delay.

ARTICLE 8.44

New Financial Services

Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the former Party would permit its own financial service suppliers to provide in accordance with its domestic laws and regulations, in like situations, provided that the introduction of the new financial services does not require 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. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 8.45

Data Processing

1. Each Party shall adopt or maintain appropriate safeguards to protect personal data and privacy, including individual records and accounts.

2. No later than two years from the date of entry into force of this Agreement, each Party shall permit financial service suppliers[1] of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service suppliers.

3. Nothing in this Article restricts the right of a Party to protect personal data and privacy, so long as such right is not used to circumvent this Agreement.

[1] For greater certainty, in Viet Nam under its domestic laws and regulations existing on the date of signature of this Agreement no natural person may transfer data.

ARTICLE 8.46

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 Party's domestic laws and regulations, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement, except for Section B (Liberalisation of Investment) which is subject to paragraph 3, shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policy or exchange rate policies.

3. Nothing in Section B (Liberalisation of Investment) shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary policy or exchange rate policy.

4. 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 for the account, or with the guarantee or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the Party's domestic laws and regulations, by financial service suppliers in competition with public entities or private institutions.

5. For greater certainty, the Parties understand that paragraphs 1 and 4 shall not be construed as permitting the Parties to apply, without protecting the rights of affected investors or investments, measures referred to in those paragraphs when the activities or services mentioned therein have been liberalised or may be carried out, as provided by the Party's domestic laws and regulations, by financial services suppliers in competition with public entities or private institutions.

ARTICLE 8.47

Self-Regulatory Organisations

When a Party requires membership of, participation in or access to any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure observance of the obligations under Articles 8.5 (National Treatment), 8.6 (Most-Favoured-Nation Treatment) and 8.11 (National Treatment).

ARTICLE 8.48

Clearing and Payment Systems

Under the terms and conditions that accord national treatment as provided for in Articles 8.5 (National Treatment) and 8.11 (National Treatment), each Party shall 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 shall not confer access to the Party's lender of last resort facilities.

SUB-SECTION 7

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 8.49

Scope, Definitions and Principles

1. This Sub-Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Section B (Liberalisation of Investment), Section C (Cross-Border Supply of Services) and Section D (Temporary Presence of Natural Persons for Business Purposes).

2. For the purposes of this Sub-Section:

(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 alternatively, "customs house brokers' services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

(c) "feeder services" means the pre- and onward transportation by sea, between ports located in the territory of a Party, of international cargo, notably containerised, *en route* to a destination outside the territory of that Party;

(d) "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;

(e) "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 of the Union and a port of another Member State of the Union;

(f) "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 including the direct contracting with providers of other transport services, with a view to cover multimodal transport operations under a single transport document, but not the right to provide such other transport services;

(g) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;

(h) "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;

(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;

and

(i) "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.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport the following principles apply:

(a) the Parties shall effectively apply the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;

(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 use of maritime auxiliary services, as well as related fees and charges, customs facilities and access to berths and facilities for loading and unloading;

(c) each Party shall permit international maritime service suppliers of the other Party to have an enterprise in its territory under conditions of establishment and operation in accordance with the conditions set out in its Schedule of Specific Commitments;

(d) the Parties shall make available to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services as well as shore-based operational services essential to ship operations, including communications, water and electrical supplies;

(e) the Union, subject to the authorisation by its competent authorities, shall permit the international maritime transport service suppliers of Viet Nam to re-position their owned or leased empty containers which are not being carried as cargo against payment and are transported for their use in handling their cargo in foreign trade, between ports of a Member State of the Union;

(f) Viet Nam, subject to the authorisation by its competent authorities,[1] shall permit the international maritime transport service suppliers of the Union or its Member States to reposition their owned or leased empty containers, which are not being carried as cargo against payment and are transported for their use in handling their cargo in foreign trade, between Quy Nhon port and Cai Mep-Thi Vai port. After five years from the date of entry into force of this Agreement, Viet Nam shall permit the international maritime transport service suppliers of the Union or its Member States to reposition owned or leased empty containers, which are not being carried as cargo against payment and are transported for their use in handling their cargo in foreign trade, between its national ports with the condition that the fed vessels (namely mother vessels) should call at ports of Viet Nam;

[1] For greater certainty, an authorisation is an administrative procedure established to ensure all relevant requirements are met. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation have been met. The authorisation shall not act as a disguised restriction on supplying of the services.

(g) the Union, subject to the authorisation by its competent authorities, shall permit international maritime transport service suppliers of Viet Nam to provide feeder services between their national ports;

(h) Viet Nam, subject to the authorisation by its competent authorities,[1] shall permit international maritime transport service suppliers of the Union or its Member States to provide feeder services between Quy Nhon port and Cai Mep-Thi Vai port for their own vessels with the condition that the fed vessels (namely mother vessels) should call at Cai Mep-Thi Vai port.

4. In applying the principles referred to in subparagraphs 3(a) and 3(b), 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 terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

(b) abstain, upon the date of entry into force of this Agreement, from introducing or applying any unilateral measures or administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

[1] For greater certainty, an authorisation is an administrative procedure established to ensure all relevant requirements are met. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation have been met. The authorisation shall not act as a disguised restriction on supplying of the services.

SECTION F

ELECTRONIC COMMERCE

ARTICLE 8.50

Objective and Principles

The Parties, recognising that electronic commerce increases trade opportunities in many sectors, shall promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter.

ARTICLE 8.51

Customs Duties

The Parties shall not impose customs duties on electronic transmissions.

ARTICLE 8.52

Regulatory Cooperation on Electronic Commerce

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which shall, *inter alia*, address the following issues:

(a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;

(b) the liability of intermediary service providers with respect to the transmission, or storage of information;

(c) the treatment of unsolicited electronic commercial communications;

(d) the protection of consumers in the ambit of electronic commerce; and

(e) any other issue relevant for the development of electronic commerce.

2. This dialogue may take the form of exchange of information on the Parties' respective laws and regulations on the issues referred to in paragraph 1 as well as on the implementation of such laws and regulations.

SECTION G

EXCEPTIONS

ARTICLE 8.53

General Exceptions

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 establishment or operation of an enterprise or cross-border supply of services, nothing in this Chapter shall be construed as preventing the adoption or enforcement by any Party of measures:

(a) necessary to protect public security or public morals or to maintain public order;

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

(c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter 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;

or

(f) inconsistent with paragraphs 1 or 2 of Article 8.5 (National Treatment) or paragraph 1 of Article 8.11 (National Treatment), provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party.[1]

[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 services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;

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

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

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

(v) distinguish 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 subparagraph (f) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic laws and regulations of the Party taking the measure.

SECTION H

INSTITUTIONAL PROVISION

ARTICLE 8.54

Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement

1. The Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement established pursuant to Article 17.2 (Specialised Committees) shall be composed of representatives of the Parties.

2. The Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement shall be responsible for the implementation of this Chapter. To that end it shall monitor and regularly review the implementation by the Parties and consider any matter in relation to this Chapter that is referred to it by a Party.

3. The responsibility for Chapter 9 (Government Procurement) is set out in Article 9.23 (Committee on Investment, Services, Electronic Commerce and Government Procurement).

CHAPTER 9

GOVERNMENT PROCUREMENT

ARTICLE 9.1

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 United Nations Provisional Central Product Classification (CPC);

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

(d) "government procurement" means the process by which a procuring entity as defined in subparagraph (l) obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

(e) "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;

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

(g) "measure" means any law, regulation, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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

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

(j) "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, of domestic suppliers, the licensing and transfer of technology, investment, counter-trade and similar action or requirement;

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

(l) "procuring entity" means an entity listed in each Party's Annex to this Chapter;

(m) "publish" means to disseminate information in paper format or by electronic means that is distributed widely and is readily accessible to the general public;

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

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

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

(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:

(a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(ii) services to be procured, including quality, performance and safety or the processes or methods for their provision;

or

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

ARTICLE 9.2

Scope and Coverage

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

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

(a) of goods, services, or any combination thereof, as specified in Annexes 9-A (Coverage of Government Procurement for the Union) and 9-B (Coverage of Government Procurement for Viet Nam);

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

(c) for which the value, as estimated in accordance with paragraphs 6 and 7, equals or exceeds the relevant threshold specified in each Party's Annex to this Chapter, at the time of publication of a notice in accordance with Article 9.6 (Notices); and

(d) that is not otherwise excluded from coverage in paragraph 3, or each Party's Annex to this Chapter, or by the effect of any other relevant parts of this Agreement.

3. Except where provided otherwise in each Party's Annex to this Chapter, this Chapter does not apply to:

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

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

(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; and

(e) procurement conducted:

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

(ii) under the particular procedure or condition of an international organisation or funded by international or foreign grants, loans or other assistance where the recipient Party, including its procuring entities, is bound to apply particular procedures or conditions imposed by the international organisation or other donors for the benefit of their international or foreign grants, loans or other assistance. Where the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers, the procurement shall be subject to paragraphs 1 and 2 of Article 9.4 (General Principles); or

(iii) 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.

4. Annex 9-A (Coverage of Government Procurement for the Union) and Annex 9-B (Coverage of Government Procurement for Viet Nam) specify in its Sections for each Party the following information:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any general notes; and

(h) in Section H, the means for publishing the procurement information.

5. Transitional measures for the application of this Chapter are set out in Section I (Transitional Measures) of Annex 9-B (Coverage of Government Procurement for Viet Nam).

6. If the domestic legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons whose procurement is not covered with respect to the goods and services concerned, the provisions of this Chapter equally apply.

Valuation

7. 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 this procurement is awarded to one or more suppliers at the same time or over a given period of time, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) the total value of any option clause.

8. For recurring contracts that consist, due to an individual requirement of the procurement, in awarding more than one contract, or in awarding contracts in separate parts, 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, where 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.

ARTICLE 9.3

Security and General Exceptions

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

2. Subject to the requirement that such measures are not applied in a manner which would constitute a disguised restriction on international trade, nothing in this Agreement shall be construed as preventing a Party from imposing or enforcing measures:

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

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, non-profit institutions carrying out philanthropic activities or prison labour.

ARTICLE 9.4

General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of both Parties, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic 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 procurement are goods or services of the other Party.

Compliance and Conduct of Procurement

3. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

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

(a) is consistent with this Chapter, by using one of the following methods of open tendering, selective tendering or limited tendering; and

(b) avoids conflicts of interest and prevents corrupt practices, in accordance with relevant domestic laws and regulations.

5. 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.

Use of Electronic Means

6. The Parties shall endeavour to conduct covered procurement by electronic means. This includes the publication of procurement information, notices and tender documentation, the reception of tenders and, where appropriate, the use of electronic auctions.

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

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

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

Rules of Origin

8. A Party shall not apply to covered procurement of goods or services imported or supplied from the other Party rules of origin that are different compared to the rules of origin it applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

9. With regard to covered procurement and subject to the relevant Annex to this Chapter, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Measures Not Specific to Procurement

10. Paragraphs 1 and 2 do not apply to:

(a) customs duties and charges of any kind imposed on, or in connection with, importation;

(b) the method of levying such duties and charges; and

(c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 9.5

Information on the Procurement System

1. Each Party shall:

(a) promptly publish any measure of general application, including standard contract terms mandated by law or regulation, regarding covered procurement in officially designated paper or electronic medium; and

(b) provide upon request of the other Party, to the extent possible, an explanation thereof.

2. Section H (Publication of Procurement Information) of each Party's Annex to this Chapter lists the paper or electronic medium through which the Party publishes the information described in paragraph 1 and the notices required by Article 9.6 (Notices), paragraph 7 of Article 9.8 (Qualification of Suppliers) and paragraph 3 of Article 9.17 (Post-Award Information).

ARTICLE 9.6

Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances referred to in Article 9.14 (Limited Tendering), a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Section H (Publication of Procurement Information) of the Annexes to this Chapter. The notice published in an electronic medium shall remain available at least until expiration of the time period indicated in the notice. The notices shall:

(a) for procuring entities covered by Section A (Central Government Entities), be accessible by electronic means free of charge through a single point of access specified in Section H (Publication of Procurement Information); and

(b) for procuring entities covered by Section B (Sub-Central Government Entities) or C (Other Covered Entities), where accessible by electronic means, be provided, at least, through links in a single gateway electronic site that is accessible free of charge.

The Parties, including their procuring entities covered by Sections B (Sub-Central Government Entities) or C (Other Covered Entities), are encouraged to publish their notices by electronic means free of charge through a single point of access.

2. Except as otherwise provided for in this Chapter, each notice of intended procurement shall include:

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

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

(c) if possible, for recurring contracts, an estimate of the timing of subsequent notices of intended procurement;

(d) where appropriate, a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and, where appropriate, whether it will involve negotiation or electronic auction;

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

(h) the address and 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 the official language at the place of the procuring entity;

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

(k) where, pursuant to Article 9.8 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice in English that is readily accessible free of charge through an electronic medium listed in Section H (Publication of Procurement Information) at the same time as the publication of the notice of intended procurement. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

4. The Union shall provide technical and financial assistance to Viet Nam in order to develop, establish and maintain an automatic system for the translation and publication of summary notices in English. This cooperation is addressed in Article 9.21 (Cooperation) of this Chapter. The implementation of this paragraph is subject to the realisation of the initiative on technical and financial assistance for the development, establishment and maintenance of an automatic system for the translation and publication of summary notices in English in Viet Nam.

Notice of Planned Procurement

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"), which should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered by Sections B (Sub-Central Government Entities) or C (Other Covered Entities) 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 2 as is available to the procuring entity, and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 9.7

Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake that procurement.

2. In establishing the conditions for participation, a procuring entity:

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

(b) may require relevant prior experience where essential to meet the requirements of the 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

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

4. Where 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 by a judicial court in respect of serious crimes or other serious offences;

(e) evidence of serious professional misconduct; or

(f) failure to pay taxes.

ARTICLE 9.8

Qualification of Suppliers

Registration Systems and Qualification Procedures

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

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimize differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party shall not adopt or apply any registration system or qualification procedure:

(a) with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement; or

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

Selective Tendering

4. Where 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 subparagraphs (a), (b), (f), (g), (j), (k) and (l) of paragraph 2 of Article 9.6 (Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in subparagraph (c), (d), (e), (h) and (i) of paragraph 2 of Article 9.6 (Notices) to the qualified suppliers that it notifies as specified in subparagraph (b) of paragraph 3 of Article 9.12 (Time-Periods).

5. The procuring entity shall:

(a) publish the notice sufficiently in advance of the procurement to allow for interested suppliers to request participation in the procurement; and

(b) allow all qualified suppliers to submit a tender, unless the procuring entity has stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, 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 5.

Multi-Use Lists

7. 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:

(a) published annually; and

(b) where published by electronic means, made available continuously,

in the appropriate medium listed in Section H (Publication of Procurement Information) of the Annexes to this Chapter.

8. The notice provided for in paragraph 7 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 procuring entity and obtain all relevant documents relating to the list;

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

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, where a multi-use list is valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow all suppliers included in a multi-use list to submit tenders for a relevant procurement.

11. 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 reasonably short time.

12. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents within the time-period provided for in paragraph 2 of Article 9.12 (Time-Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Sub-Central Government and other Covered Entities

13. A procuring entity covered by Sections B (Sub-Central Government Entities) or C (Other Covered Entities) of the Annexes to this Chapter may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under paragraph 2 of Article 9.6 (Notices) as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the procuring entity promptly provides to suppliers that have expressed an interest in a given procurement to the procuring entity sufficient information to permit them to assess their interest in the procurement, including all remaining information required under paragraph 2 of Article 9.6 (Notices), to the extent such information is available.

14. A procuring entity covered by Sections B (Sub-Central Government Entities) or C (Other Covered Entities) of the Annexes to this Chapter may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 11 to tender in a given procurement where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

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

16. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the procuring 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.

ARTICLE 9.9

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating an unnecessary obstacle to trade between the Parties.

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

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

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

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

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

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

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

ARTICLE 9.10

Market Consultations

1. Before launching a procurement, procuring entities may conduct market consultations with a view to preparing the procurement, notably for the development of technical specifications, provided that, where market research is performed by a supplier in the context of covered procurement, such procurement is subject to the provisions of this Chapter.

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 it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

ARTICLE 9.11

Tender Documentation

Tender Documentation

1. A procuring entity shall promptly make available or provide upon request 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, such documentation shall include a complete description of:

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

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

(c) all evaluation criteria to be applied in the awarding of the contract and, except where price is the sole criterion, the relative importance of such criteria;

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

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

(f) where there will be a public opening of tenders, the date, time and place for the opening of tenders and, if the domestic legislation of a Party stipulates that only certain persons are authorised to be present, the indication of those persons;

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

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

2. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account, where appropriate, such factors as the complexity of the 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.

3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, *inter alia*, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

4. A procuring entity shall promptly reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

5. If, prior to the award of a contract, a procuring entity modifies the evaluation 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 such modifications or 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 such suppliers are known to the procuring entity, or otherwise publish or provide such documents in the same manner as the original information was made available; and

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

ARTICLE 9.12

Time-Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to obtain the tender documentation and to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the 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 where electronic means are not used.

Such time periods, including any extension thereof, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. In case of a state of urgency, duly substantiated by the procuring entity, that renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5 and 7, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to not less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in paragraph 5 of Article 9.6 (Notices) 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 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 procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under paragraph 2 of Article 9.6 (Notices), 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;

(c) the procuring entity procures commercial goods or services; or

(d) a state of urgency, duly substantiated by the procuring entity, that renders impracticable the time-period for tendering established in accordance with paragraph 3.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all 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 in no case result in a reduced time-period for tendering established in accordance with paragraph 3 of less than 10 days from the date on which the notice of intended procurement is published.

7. If a procuring entity covered by Sections B (Sub-Central Government Entities) or C (Other Covered Entities) of the Annexes to this Chapter 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 agreement, the period shall not be less than 10 days.

ARTICLE 9.13

Negotiations

1. With regard to covered procurement, a Party may provide for its procuring entities to conduct negotiations:

(a) if the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 9.6 (Notices); 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) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 9.14

Limited Tendering

1. Provided a procuring entity does not use limited tendering 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 9.6 (Notices), 9.7 (Conditions for Participation), 9.8 (Qualification of Suppliers), 9.10 (Market Consultations), 9.11 (Tender Documentation), 9.12 (Time-Periods), 9.13 (Negotiations) and 9.15 (Electronic Auctions) only under any of the following circumstances:

(a) if in response to a notice of intended procurement, or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

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

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

(iv) the tenders submitted have been collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the tender documentation;

(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) 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 such 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 or conditions under original supplier warranties; and

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

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

(e) for goods purchased on a commodity market or exchange;

(f) when 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 prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the 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) if additional construction services that were not included in the initial contract but were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein;

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

(i) when 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 contest is judged by an independent jury with a view to a design contract being awarded to a winner.

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

ARTICLE 9.15

Electronic Auctions

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

(a) the automatic evaluation method 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; and

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

ARTICLE 9.16

Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

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

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

Awarding of Contracts

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

4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

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

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

6. 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.

ARTICLE 9.17

Post-Award Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted a tender or application for participation of the procuring entity's contract award decisions and, on the request of a supplier, shall do so in writing.

2. Subject to paragraphs 2 and 3 of Article 9.18 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender and, for suppliers meeting the conditions for participation whose tenders pass technical specifications, the relative advantages of the successful supplier's tender.

Publication of Award Information

3. 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 (Publication of Procurement Information) of the Annexes to this Chapter. Where 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 and address of the procuring entity;

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

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

(e) the date of award; and

(f) the type of procurement method used and, in cases where limited tendering was used in accordance with Article 9.14 (Limited Tendering), a brief description of the circumstances justifying the use of limited tendering.

Maintenance of Records

4. Each procuring entity shall maintain:

(a) the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports required under Article 9.14 (Limited Tendering), for a period of at least three years from the date it awards a contract; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Statistics

5. The Parties shall endeavour to communicate the available statistical data relevant to the procurement covered by this Chapter.

ARTICLE 9.18

Disclosure of Information

Provision of Information

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, where applicable, information on the characteristics and relative advantages of the successful tender. The other Party shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any supplier information that could prejudice legitimate commercial interests of another supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

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

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

ARTICLE 9.19

Domestic Review

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

(a) a breach of this Chapter, or

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

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 generally available.

2. In case 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 procurement shall encourage, where appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedures. Each Party or its procuring entities shall make information on such complaint mechanisms generally available.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Where a body other than an authority referred to in paragraph 1 initially reviews a challenge, the Party shall ensure that the supplier may lodge an appeal against the initial decision with an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

5. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have 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 in 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; and

(e) the review body shall make its decisions on a supplier's challenge in a timely manner, in writing, and shall include an explanation of the grounds for each decision.

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

(a) rapid interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement. Such 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 such 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, when a review body has determined that there has been a breach or a failure as referred to in paragraph 1. The compensation for the damages suffered may be limited to either the costs reasonably incurred in the preparation of the tender or in bringing the challenge, or both.

ARTICLE 9.20

Modification and Rectification to Coverage

1. A Party shall notify the other Party in writing of any proposed modification or rectification to its coverage (hereinafter referred to as "modification").

2. For any proposed withdrawal of an entity from its coverage in exercise of its rights on the grounds that government control or influence over it has been effectively eliminated, the Party proposing the modification (hereinafter referred to as "modifying Party") shall include in the notification evidence that such government control or influence has been effectively eliminated.

3. Government control or influence over an entity is deemed to be effectively eliminated when the modifying Party, including for the Union its central government entities and its sub-central government entities, and for Viet Nam its central government entities and sub-central government entities:

(a) does not own directly or indirectly more than 50 per cent of the entity's subscribed capital or the votes attached to the shares issued by the entity; and

(b) cannot appoint directly or indirectly more than half of the members of the entity's board of directors or an equivalent body.

4. For any other proposed modification, the modifying Party shall include in the notification information regarding the likely consequences of the change for the mutually agreed coverage provided in the Agreement. Where the modifying Party proposes to make rectifications of a purely formal nature and minor modifications to its coverage not affecting covered procurement, modifications of this kind shall be notified at least every two years.

Proposed modifications of coverage are deemed to constitute rectifications of a purely formal nature and minor modifications to the Party's coverage in the following cases:

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

(b) merger of one or more procuring entities listed in the Party's Annex to this Chapter; or

(c) the separation of a procuring entity listed in the Party's Annex to this Chapter into two or more entities that are all added to the procuring entities listed in the same Section of the Annex.

5. The modifying Party may include in its notice an offer of compensatory adjustments for the change to its coverage, if necessary to maintain a level of coverage comparable to that existing prior to the modification. The modifying Party shall not be required to provide compensatory adjustments to the other Party when a proposed modification concerns:

(a) a procuring entity over which it has effectively eliminated its control or influence in respect of covered procurement by that entity; or

(b) rectifications of a purely formal nature and minor modifications to its Annex to this Chapter.

Notwithstanding subparagraph (a), should the withdrawal by a modifying Party of a significant number of procuring entities from its coverage on the ground that these entities are no longer under government control or influence in accordance with the criteria set out in paragraph 3 result in a significant imbalance of coverages agreed between the Parties, the modifying Party shall accept to enter into consultations with the other Party to discuss, without prejudice, the modalities for redressing such imbalance.

6. The other Party shall notify the modifying Party of any objection to the proposed modification within 45 days of the notification.

7. If the other Party notifies an objection, both Parties shall seek to resolve the issue through consultations. During the consultations, the objecting Party may request further information with a view to clarifying the proposed modification, including the nature of any government control or influence.

8. If the consultations under paragraph 7 do not resolve the issue, the Parties may use the dispute settlement mechanism provided for in Chapter 15 (Dispute Settlement).

9. A proposed modification shall become effective only if:

(a) the other Party has not submitted to the modifying Party a written objection to the proposed modification within 45 days from the date of the notification of the proposed modifications;

(b) the Parties have reached an agreement; or

(c) an arbitration panel has issued a final report in accordance with Article 15.11 (Final Report) concluding that the Parties shall give effect to the proposed modification.

ARTICLE 9.21

Cooperation

1. The Parties recognise their shared interest in cooperating in the promotion of international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets.

2. Without prejudice to paragraph 4 of Article 9.6 (Notices), the Parties shall endeavour to cooperate in matters such as:

(a) exchanging experiences and information, such as regulatory frameworks and best practices;

(b) developing and expanding the use of electronic means in government procurement systems;

(c) building capability of government officials in best government procurement practices; and

(d) institutional strengthening for the fulfilment of the provisions of this Chapter.

ARTICLE 9.22

Future Negotiations

Procurement by Electronic Means

1. The Parties shall review the provisions of Article 9.15 (Electronic Auctions) once Viet Nam's electronic procurement system has been fully developed to take into account possible technological changes and in particular to consider other aspects such as the mathematical formula used for the automatic evaluation method and the possible communication of the results of any initial evaluation to the participants in the auction.

2. The Parties shall conduct further negotiations on the duration of the period for the storage of data relating to procurement by electronic means once Viet Nam's electronic procurement system is operational.

3. The Parties shall conduct further negotiations on the coverage of additional sub-central government entities no later than 15 years after the date of the entry into force of this Agreement.

ARTICLE 9.23

Committee on Investment, Services, Electronic Commerce and Government Procurement

The Committee on Investment, Services, Electronic Commerce and Government Procurement established pursuant to Article 17.2 (Specialised Committees) shall be responsible for the implementation of this Chapter. It may, in particular:

(a) discuss the exchange of statistical data in accordance with paragraph 5 of Article 9.17 (Post-Award Information);

(b) review pending notifications of modifications to coverage and approve the revised list of procuring entities in Sections A (Central Government Entities) to C (Other Covered Entities) of the Annexes to this Chapter;

(c) approve the compensatory adjustments resulting from modifications affecting coverage;

(d) consider issues regarding government procurement that are referred to it by a Party; and

(e) discuss any other matters related to the operation of this Chapter.

CHAPTER 10

COMPETITION POLICY

SECTION A

ANTI-COMPETITIVE CONDUCT

ARTICLE 10.1

Principles

The Parties recognise the importance of undistorted competition in their trade and investment relations. The Parties acknowledge that anti-competitive conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

ARTICLE 10.2

Legislative Framework

1. Each Party shall adopt or maintain comprehensive legislation on competition that proscribes anti-competitive conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. The competition law of the Parties shall, in their respective territories, effectively address:

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

(b) abuses by one or more enterprises of a dominant position; and concentrations between enterprises which would significantly impede effective competition.

ARTICLE 10.3

Implementation

1. Each Party shall maintain its autonomy in developing and enforcing its competition law.

2. Each Party shall maintain authorities, which are responsible for the full application and the effective enforcement of its competition law, are appropriately equipped and have the powers necessary for fulfilling their responsibilities.

3. All enterprises, private or public, shall be subject to the competition law referred to in Article 10.2 (Legislative Framework).

4. Each Party shall apply its competition law in a transparent and non-discriminatory manner, including to private and public enterprises, respecting the principles of procedural fairness and rights of defence of the enterprises concerned.

5. The application of competition law shall not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to the enterprises in question. Exemptions from the competition law of a Party shall be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

SECTION B

SUBSIDIES

ARTICLE 10.4

Principles

1. The Parties agree that a Party may grant subsidies when they are necessary to achieve a public policy objective. The Parties acknowledge that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, a Party should not grant subsidies to enterprises providing goods or services if they negatively affect, or are likely to affect, competition and trade.

2. An illustrative list of public policy objectives for which a Party may grant subsidies, subject to the conditions set out in this Section, includes the following:

(a) making good the damage caused by natural disasters or exceptional occurrences;

(b) promoting the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(c) remedying a serious disturbance in the economy of one of the Parties;

(d) facilitating the development of certain economic activities or of certain economic areas, including but not limited to, subsidies for clearly defined research, development and innovation purposes, subsidies for training or for the creation of employment, subsidies for environmental purposes, subsidies in favour of small and medium-sized enterprises as defined in the Parties' respective legislations; and

(e) promoting culture and heritage conservation.

3. Each Party shall ensure that enterprises use the specific subsidies provided by a Party only for the policy objective for which the specific subsidies have been granted.[1]

ARTICLE 10.5

Definition and Scope

1. For the purposes of this Section, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement irrespective of whether it is granted to an enterprise manufacturing goods or supplying services.[2]

[1] For greater certainty, when a Party has set up the relevant legislative framework and administrative procedures to this effect, the obligation is considered to be fulfilled.

[2] This Article does not prejudice the Parties' positions and the possible outcome of future discussions in the WTO on subsidies to services. Depending on the progress of those discussions at the WTO level, the Parties may adopt a decision by a relevant committee to update this Agreement in this respect.

2. This Section applies only to subsidies which are specific in accordance with Article 2 of the SCM Agreement. Subsidies to individual consumers or general measures, including subsidies or measures intended to achieve social policy objectives, are not considered as specific.

3. This Section applies to specific subsidies to all enterprises, including public and private enterprises.

4. The application of this Section shall not obstruct the performance, in law or in fact, of the particular tasks of public interest, including public service obligations, assigned to the enterprises concerned. Exemptions should be limited to tasks of public interest, proportionate to the public policy objectives assigned to those enterprises, and transparent.

5. This Section does not apply to non-economic activities.

6. Paragraph 1 of Article 10.9 (Specific Subsidies Subject to Conditions) does not apply to fisheries subsidies and subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture.

7. This Section applies only to specific subsidies of which the amount per beneficiary over a period of three years is above 300 000 special drawing rights.[1]

[1] For greater certainty, the notification obligation does not require the notifying Party to provide the name of the beneficiary of the subsidy.

8. With regard to subsidies to enterprises supplying services, Article 10.7 (Transparency) and Article 10.9 (Specific Subsidies Subject to Conditions) apply only to the following services sectors: telecommunications, banking, insurance, transport including maritime transport, energy, computer services, architecture and engineering, and construction and environmental services, subject to the reservations provided for in Chapter 8 (Liberalisation of Investment, Trade in Services and E-Commerce).

9. This Section does not apply to sectors or sub-sectors which the Parties have not listed in Chapter 8 (Liberalisation of Investment, Trade in Services and E-Commerce).

10. Article 10.9 (Specific Subsidies Subject to Conditions) does not apply to subsidies formally agreed or granted before or within five years after the entry into force of this Agreement.

ARTICLE 10.6

Relationship with the WTO

This Section applies without prejudice to the rights and obligations of each Party under Article VI of GATT 1994, the SCM Agreement and the Agreement on Agriculture.

ARTICLE 10.7

Transparency

1. Each Party shall ensure transparency in the area of specific subsidies. To that end, each Party shall notify the other Party every four years the legal basis, form, amount or budget, and if possible, the recipient of a specific subsidy.[1]

2. The notification obligation referred to in paragraph 1 is deemed to have been fulfilled if the Party makes the relevant information available on a publicly accessible website, as from 31 December of the calendar year which follows the year when the subsidy had been granted. The first notification shall be made available no later than four years after the date of entry into force of this Agreement.

[1] For greater certainty, the notification obligation does not require the notifying Party to provide the name of the beneficiary of the subsidy.

ARTICLE 10.8

Consultations

1. If a Party considers that a specific subsidy granted by the other Party, which is not covered by Article 10.9 (Specific Subsidies Subject to Conditions), negatively affects or may negatively affect its trade or investment interests, that Party may express its concern in written form to the other Party and request consultations on the matter. The requested Party shall accord sympathetic consideration to this request. The consultations should, in particular, aim at identifying whether:

(a) the specific subsidy was only granted to achieve a public policy objective;

(b) the amount of the subsidy in question is limited to the minimum needed to achieve this objective;

(c) the subsidy creates an incentive; and

(d) the negative effect on trade and investment of the requesting Party is limited.

2. In order to facilitate the consultations, the requested Party shall provide information on the specific subsidy in question within 90 days of the date of receipt of the request. If the requesting Party, after receiving information on the subsidy in question, considers that the subsidy concerned by the consultations negatively affects or may negatively affect in a disproportionate manner its trade or investment interests, the requested Party shall use its best endeavours to eliminate or minimise these negative effects caused by the subsidy in question.

ARTICLE 10.9

Specific Subsidies Subject to Conditions

1. The Parties shall apply conditions to the following specific subsidies:

(a) a legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises is allowed, provided that the coverage of the debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of that responsibility;

(b) support to insolvent or ailing enterprises in various forms, such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, and tax exemptions, with a duration of more than one year is allowed provided that a credible restructuring plan has been prepared, which is based on realistic assumptions with a view to ensuring the return of the enterprise to long-term viability within a reasonable time and with the enterprise itself contributing to the costs of restructuring.[1]

[1] This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to keep the enterprise in business for the time necessary to work out a restructuring or liquidation plan.

2. Paragraph 1 does not apply to specific subsidies for which the Party granting the subsidy has demonstrated, upon a written request of the other Party, that the subsidy in question does neither affect nor is likely to affect trade or investment of the other Party.

3. Paragraph 1 does not apply to specific subsidies that are granted to remedy a serious disturbance in the economy of a Party. A disturbance in the economy of a Party shall be considered serious if it is exceptional, temporary and significant and affects the Member States or the whole economy of a Party rather than a specific region or economic sector.

ARTICLE 10.10

Review

The Parties shall review this Section no later than five years after the entry into force of this Agreement and at regular intervals thereafter. The Parties shall consult each other on the need to modify this Section in light of the experience gained and the development of any corresponding rules in the WTO. The Parties shall, in particular, review the inclusion of additional services sectors under the scope of this Section in Article 10.5 (Definitions and Scope).

SECTION C

DEFINITIONS AND COMMON PRINCIPLES

ARTICLE 10.11

Definitions

For the purposes of this Chapter:

(a) "public policy objective" means the general goal to deliver an outcome in the overall public benefit; and

(b) "tasks of public interest" means specific activities which deliver outcomes in the overall public benefit that would not be supplied or would be supplied under different conditions in terms of accessibility, quality, safety, affordability or equal treatment by the market without public intervention.

ARTICLE 10.12

Confidentiality

1. When exchanging information under this Chapter, the Parties shall take into account the limitations imposed by their respective legislation concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. Any information communicated under this Agreement shall be treated by the receiving Party as confidential unless the other Party has authorised the disclosure or made that information available to the general public.

ARTICLE 10.13

Dispute Settlement

No Party shall have recourse to dispute settlement under this Agreement for any matter arising under Section A (Anti-Competitive Conduct) and Article 10.8 (Consultations).

ARTICLE 10.14

Cooperation

In order to fulfil the objectives of this Chapter and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development, including subsidy control, subject to the availability of funding under the Parties' cooperation instruments and programmes.

CHAPTER 11

STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES, AND DESIGNATED MONOPOLIES

ARTICLE 11.1

Definitions

For the purposes of this Chapter:

(a) "commercial activities" means activities the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by the enterprise, and are undertaken with an orientation towards profit-making;[1]

(b) "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 an enterprise operating according to market economy principles in the relevant business or industry;

[1] For greater certainty, activities undertaken by an enterprise which operates on a non-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

(c) "designate" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(d) "designated monopoly" means an entity, including a group of entities or a government agency, and any subsidiary thereof, that in a relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(e) "enterprise granted special rights or privileges" means any enterprise, including any subsidiary, public or private, that has been granted by a Party, in law or in fact, special rights or privileges;

(f) "special rights or privileges" means rights or privileges granted by a Party to a limited number of enterprises, or any subsidiaries thereof, within a given geographical area or product market, the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area or product market in like circumstances. The granting of a license or a permit to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right or privilege; and

(g) "state-owned enterprise" means an enterprise, including any subsidiary, in which a Party, directly or indirectly:

(i) owns more than 50 per cent of the enterprise's subscribed capital or controls more than 50 per cent of the votes attached to the shares issued by the enterprise;

(ii) can appoint more than half of the members of the enterprise's board of directors or an equivalent body; or

(iii) can exercise control over the strategic decisions of the enterprise.

ARTICLE 11.2

Scope of Application

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 the General Agreement On Tariffs And Trade 1994* as well as under paragraphs 1, 2 and 5 of Article VIII of GATS which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. This Chapter applies to all state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies engaged in a commercial activity. If an enterprise combines commercial and non-commercial activities[1], only the commercial activities of that enterprise are covered by this Chapter.

3. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies for which a Party has taken measures on a temporary basis in response to a national or global economic emergency.

4. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies if in any one of the three previous consecutive years the annual revenue derived from the commercial activities of that enterprise or that entity was less than 200 million special drawing rights.[2] This threshold applies to state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies at sub-central levels of government after five years from the date of entry into force of this Agreement.

5. This Chapter does not apply to covered procurement by a Party or its procuring entities within the meaning of Article 9.2 (Scope and Coverage).

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1 This includes carrying out a public service obligation.

2 The calculation of the revenue shall include the relevant revenue of all state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, including the revenue of the subsidiaries engaged in commercial activities on the same or related markets.

6. This Chapter does not apply to state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies, owned or controlled by a governmental authority of a Party in charge of national defence, public order or public security, except if these are engaged exclusively in commercial activities unrelated to national defence, public order or public security.

7. This Chapter does not apply to any service supplied by state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies in the exercise of governmental authority.[1]

8. This Chapter does not apply to measures or activities listed in Annex 11-A (Specific Rules for Viet Nam on State-Owned Enterprises).

ARTICLE 11.3

General Provisions

1. Nothing in this Chapter shall affect the laws and regulations of a Party governing its systems of state ownership.

[1] The term "a service supplied in the exercise of governmental authority" has the same meaning as defined in subparagraph 3(c) of Article I of GATS.

2. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter shall prevent a Party from establishing or maintaining state-owned enterprises from granting enterprises special rights or privileges, or from designating or maintaining monopolies.

3. A Party shall not require or encourage its state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies to act in a manner inconsistent with this Chapter.

ARTICLE 11.4

Non-Discrimination and Commercial Considerations

1. Each Party shall ensure that its state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies, when engaging in commercial activities:

(a) act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil the terms of their public mandate that are not inconsistent with subparagraph 1(b);

(b) in their purchase of a good or service:

(i) accord to a good or service supplied by an enterprise of the other Party treatment no less favourable than they accord to a like good or a like service supplied by enterprises of the Party; and

(ii) accord to a good or service supplied by an enterprise of investors of the other Party in the Party's territory treatment no less favourable than they accord to a like good or a like service supplied by enterprises of investors of the other Party in the relevant market in the Party's territory;

(c) in their sale of a good or service:

(i) accord to an enterprise of the other Party treatment no less favourable than they accord to enterprises of the Party; and

(ii) accord to an enterprise of investors of the other Party in the Party's territory treatment no less favourable than they accord to enterprises of investors of the other Party in the relevant market in the Party's territory.

2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; 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.

3. Paragraphs 1 and 2 do not apply to the sectors referred to in Article 8.3 (Scope) and Article 8.9 (Scope).

4. Paragraphs 1 and 2 apply to commercial activities of state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies, if the same activity would affect trade in services and investment with respect to which a Party has undertaken a commitment under Articles 8.5 (National Treatment), 8.6 (Most-Favoured-Nation Treatment), 8.11 (National Treatment), subject to the conditions or qualifications set out in its respective Schedule of Specific Commitments in Annexes 8-A (The Union's Schedule of Specific Commitments) and 8-B (Viet Nam's Schedule of Specific Commitments) pursuant to Articles 8.7 (Schedule of Specific Commitments) and 8.12 (Schedule of Specific Commitments). For greater certainty, in the event of a conflict between paragraph 4 of Article 11.2 (Scope of Application) and the conditions or qualifications set out in its Schedule of Specific Commitments pursuant to Articles 8.7 (Schedule of Specific Commitments) and 8.12 (Schedule of Specific Commitments), those schedules shall prevail.

ARTICLE 11.5

Regulatory Framework

1. The Parties shall endeavour to ensure that state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies observe internationally recognised standards of corporate governance.

2. Each Party shall ensure that its regulatory bodies or functions are not accountable to any enterprises or entities that they regulate in order to ensure the effectiveness of the regulatory bodies or functions, and act impartially[1] in like circumstances with respect to all enterprises or entities that they regulate, including state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies.[2]

3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner, including with regard to state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies.

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[1] For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions 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.

ARTICLE 11.6

Transparency

1. A Party which has reasonable reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges, or a designated monopoly of the other Party may request the other Party in writing to provide information about the operations of that enterprise or entity. The request shall indicate the enterprise or entity, the products or services and markets concerned, and include indications that the enterprise or entity is engaging in practices that hinder trade or investment between the Parties.

2. The information referred to in paragraph 1 shall include:

(a) the ownership and the voting structure of the enterprise or entity, indicating the percentage of shares and the percentage of voting rights that a Party or a state-owned enterprise, an enterprise granted special rights or privileges, or a designated monopoly cumulatively own;

(b) a description of any special shares or special voting or other rights that a Party or a state-owned enterprise, an enterprise granted special rights or privileges, or a designated monopoly hold, where such rights differ from the rights attached to the common shares of such enterprise or entity;

(c) the organisational structure of the enterprise or entity, the composition of its board of directors or of an equivalent body exercising direct or indirect control in such an enterprise or entity, and cross-holdings and other links with different state-owned enterprises, enterprises granted special rights or privileges, or designated monopolies;

(d) a description of which government departments or public bodies regulate or monitor the enterprise or entity, a description of the reporting lines[1], and the rights and practices of the government department or public bodies in the appointment, dismissal or remuneration of managers;

(e) annual revenue or total assets, or both;

(f) exemptions, immunities and any other measures, including more favourable treatment, applicable in the territory of the requested Party to any state-owned enterprise, enterprise granted special rights or privileges, or designated monopoly.

3. A Party may request the other Party to provide additional information regarding the calculations of the revenue threshold referred to in paragraph 4 of Article 11.2 (Scope of Application).

[1] For greater certainty, a Party is not obliged to disclose reports or the contents of any reports.

4. Paragraphs 1 to 3 shall not require a Party to disclose confidential information which would be inconsistent with its laws and regulations, impede law enforcement or otherwise be contrary to the public interest or prejudice the legitimate commercial interests of particular enterprises.

5. In the case of the Union, subparagraphs 2(a) to (e) do not apply to enterprises which qualify as small or medium-sized enterprises as defined in the Union law.

ARTICLE 11.7

Technical Cooperation

Recognising the importance of promoting effective legal and regulatory frameworks for state-owned enterprises, the Parties shall engage in mutually agreed technical cooperation activities with a view to promoting efficiency and transparency of state-owned enterprises, subject to the availability of funding under the Party's cooperation instruments and programmes.

CHAPTER 12

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS AND PRINCIPLES

ARTICLE 12.1

Objectives

1. The objectives of this Chapter are to:

(a) facilitate the creation, production and commercialisation of innovative and creative products between the Parties, contributing to a more sustainable and inclusive economy in each Party; and

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

2. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

ARTICLE 12.2

Nature and Scope of Obligations

1. The Parties affirm their rights and obligations under the international treaties dealing with intellectual property to which they are party, including the TRIPS Agreement. The Parties shall ensure an adequate and effective implementation of those treaties. This Chapter shall complement and further specify those rights and obligations between the Parties with an aim at ensuring adequate and effective implementation of those treaties, as well as the balance between the rights of intellectual property holders and the interest of the public.

2. For the purposes of this Agreement, intellectual property refers at least to all categories of intellectual property that are referred to in Sections 1 to 7 of Part II of the TRIPS Agreement, namely:

(a) copyright and related rights;

(b) trademarks;

(c) geographical indications;

(d) industrial designs;

(e) patent rights;

(f) layout-designs (topographies) of integrated circuits;

(g) protection of undisclosed information; and

(h) plant varieties.

3. 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* of 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as "the Paris Convention").

ARTICLE 12.3

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any third country shall be accorded immediately and unconditionally to the nationals of the other Party, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

ARTICLE 12.4

Exhaustion

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 12.5

Protection Granted

1. The Parties shall comply with the rights and obligations set out in the following international treaties:

(a) the *Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886*, as last revised at Paris on 24 July 1971 (hereinafter referred to as "the Berne Convention");

(b) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*, done at Rome on 26 October 1961; and

(c) the TRIPS Agreement.

2. The Parties shall accede to the following international treaties within three years from the date of entry into force of this Agreement:

(a) the *WIPO Copyright Treaty*, adopted in Geneva on 20 December 1996; and

(b) the *WIPO Performances and Phonograms Treaty*, adopted in Geneva on 20 December 1996.

ARTICLE 12.6

Authors

Each Party shall provide for authors to have the exclusive right to authorise or prohibit:

(a) direct or indirect 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 other transfer of ownership, of the original of their works or of copies thereof; and

(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.

ARTICLE 12.7

Performers

Each Party shall provide for performers to have the exclusive right to authorise or prohibit:

(a) the fixation of their performances;

(b) direct or indirect reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) distribution to the public, by sale or other transfer of ownership, of the fixations of their performances;

(d) the making available to the public, by wire or wireless means, of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(e) the broadcasting by wireless means and the communication to the public of their unfixed performances, except where the performance is itself already a broadcast performance.

ARTICLE 12.8

Producers of Phonograms

Each Party shall provide for phonogram producers to have the exclusive right to authorise or prohibit:

(a) direct or indirect reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) distribution to the public, by sale or other transfer of ownership, of their phonograms, including copies thereof; and

(c) the making available to the public, by wire or wireless means, of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 12.9

Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts;

(b) the reproduction of fixations of their broadcasts;

(c) the distribution to the public of fixations of their broadcasts; and

(d) the rebroadcasting of their broadcasts by wireless means.

ARTICLE 12.10

Broadcasting and Communication to the Public

Each Party shall provide to performers and producers of phonograms a right in order to ensure that a single equitable remuneration is paid by the user to them, if a phonogram published for commercial purposes or a reproduction of such phonogram is used for broadcasting by wireless means or for any communication to the public. Each Party shall ensure that this remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

ARTICLE 12.11

Term of Protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for not less than 50 years after his death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. The rights of performers shall expire not less than 50 years after the date of the performance. If a fixation of the performance is lawfully published or lawfully communicated to the public within that period, those rights shall expire not less than 50 years from the date of the first lawful publication or the first lawful communication to the public, whichever is earlier.

4. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. If the phonogram has been lawfully published within this period, those rights shall expire not less than 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period referred to in the first sentence, and if the phonogram has been lawfully communicated to the public within that period, those rights shall expire not less than 50 years from the date of the first lawful communication to the public.

5. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

6. The terms laid down in this Article shall be calculated from the first of January of the year following the event which gives rise to them.

ARTICLE 12.12

Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which are used by the right holder of any copyright or related right which the person concerned, carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, offer to public 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. In providing adequate legal protection pursuant to paragraphs 1 and 2, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing those paragraphs. The obligations under paragraphs 1 and 2 are without prejudice to the rights, limitations, exceptions, or defences to infringements of copyright or related rights under each Party's domestic law.

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 right as provided for by domestic legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the right holders through 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.

ARTICLE 12.13

Protection of Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts:

(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, performances, phonograms or other subject-matter protected under this Sub-Section from which electronic rights management information has been removed or altered without authority,

if this person knows, or has reasonable grounds to know, that by so doing this person is inducing, enabling, facilitating or concealing an infringement of any copyright or any related right as provided for by domestic legislation.

2. For the purposes of this Article, the term "rights management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, the author or any other right holder, information about the terms and conditions of use of the work or other subject-matter, or any numbers or codes that represent such information.

3. Paragraph 2 applies when any of these 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 Sub-Section.

ARTICLE 12.14

Exceptions and Limitations

1. Each Party may provide for exceptions and limitations to the rights set out in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public) 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 in accordance with the international treaties to which they are party.

2. Each Party shall provide that acts of reproduction referred to in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public), which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

(a) a transmission in a network between third parties by an intermediary; or

(b) a lawful use,

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public).

ARTICLE 12.15

Artists' Resale Right in Works of Art

1. A Party may provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 applies to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any professional dealers in works of art.

3. A Party may provide that the right referred to in paragraph 1 does 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 where the resale price does not exceed a certain minimum amount.

4. The right referred to in paragraph 1 may be claimed in a Party only if the domestic legislation of that Party to which the author belongs so permits, and to the extent permitted by the Party where this right is claimed. The procedure for collection and the amounts shall be determined in domestic legislation.

ARTICLE 12.16

Cooperation on Collective Management of Rights

The Parties shall endeavour to promote dialogue and cooperation between their respective collective management organisations for the purposes of promoting the availability of works and other protected subject-matter in the territories of the Parties and the transfer of royalties for the use of such works or other protected subject-matter.

SUB-SECTION 2

TRADEMARKS

ARTICLE 12.17

International Treaties

1. The Parties affirm their rights and obligations under the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007.

2. Each Party shall use the classification provided for in the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done at Nice on 15 June 1957, as amended on 28 September 1979 (hereinafter referred to as "Nice Classification").[1]

3. Each Party shall simplify and develop its trademark registration procedures using, *inter alia*, the *Trademark Law Treaty*, adopted at Geneva on 27 October 1994, and the *Singapore Treaty on the Law of Trademarks*, done at Singapore on 27 March 2006, as reference points.

[1] For greater certainty, a Party shall use the updated versions of the Nice Classification to the extent that the updated version has been published by WIPO and, in the case of Viet Nam, the official translation has been published.

ARTICLE 12.18

Rights Conferred by a Trademark

A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his 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;[1] and

(b) any sign which is identical with or similar to the trademark in relation to goods or services, which are identical with or similar to those for which the trademark is registered, where such use would result in a likelihood of confusion on the part of the public.

ARTICLE 12.19

Registration Procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final refusal to register a trademark by the relevant trademark administration shall be communicated in writing and be duly reasoned.

[1] For greater certainty, this is without prejudice to Article 12.21 (Exceptions to the Rights Conferred by a Trademark).

2. Each Party shall provide for the possibility to oppose trademark applications and an opportunity for the trademark applicant to respond to such opposition.

3. Each Party shall provide a publicly available electronic database of published trademark applications and trademark registrations.

ARTICLE 12.20

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, the Parties shall give consideration to 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 the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 12.21

Exceptions to the Rights Conferred by a Trademark

Each Party:

(a) shall provide for the fair use of descriptive terms[1] as a limited exception to the rights conferred by trademarks; and

(b) may provide for other limited exceptions,

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

[1] The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, where such use is in accordance with honest practices in industrial or commercial matters.

ARTICLE 12.22

Revocation of a Registered Trademark[1]

1. Each Party shall provide that a registered trademark shall be liable to revocation if, within a continuous period of five years prior to a request for revocation, it has not been put to genuine[2] use by its owner or the owner's licensee in the relevant territory in connection with the goods or services in respect of which it is registered, without justifiable reasons, except where the use is commenced or resumed at least three months before the request for revocation. A Party may provide that this exception be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the request for revocation may be filed.

2. A Party may provide that a trademark can be liable to revocation if, after the date on which it was registered, it has become, as a result of acts or inactivity of the proprietor, the common name in the trade for a product or service in respect of which it is registered.

[1] For Viet Nam "revocation" is equivalent to "termination".

[2] Genuine use implies real use for the purpose of trading in the goods or services in question so as to generate goodwill. In general, this implies actual sales and there must have been some sales of the goods or providing of the services during the relevant period of time. Use in advertising may amount to genuine use. However, mere preparatory steps are not to be regarded as genuine use of a mark. Genuine use is opposed to token or artificial use designed solely to maintain the trade mark on the register.

3. Any use of a registered trademark by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, that is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services shall make the trademark liable to revocation or alternatively be prohibited by relevant domestic law.

SUB-SECTION 3

GEOGRAPHICAL INDICATIONS

ARTICLE 12.23

Scope of Application

1. This Sub-Section applies to the recognition and protection of geographical indications for wines, spirits, agricultural products and foodstuffs which are 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 they are protected as geographical indications in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications) in the territory of the Party of origin.

ARTICLE 12.24

System of Registration and Protection of Geographical Indications

1. Each Party shall maintain a system for the registration and protection of geographical indications which shall contain at least the following elements:

(a) a register listing geographical indications protected in the territory of that Party;

(b) an administrative process verifying that geographical indications to be entered, or maintained , on the register referred to in subparagraph (a) identify a good as originating in a territory, region or locality of a Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(c) an opposition procedure that allows the legitimate interests of any natural or legal person to be taken into account; and

(d) procedures for rectification and removal or termination of the effects of the entries on the register referred to in subparagraph (a) that take into account the legitimate interests of third parties and the right holders of the registered geographical indications in question.[1]

[1] Without prejudice to its domestic legislation on the system of registration and protection of geographical indications, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

2. Each Party may provide in its domestic legislation more extensive protection than is required by this Sub-Section, provided that such protection does not contravene the protection provided under this Agreement.

ARTICLE 12.25

Established Geographical Indications

1. Having completed an opposition procedure and an examination of the geographical indications of the Union listed in Part A of Annex 12-A (List of Geographical Indications), Viet Nam recognises that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by the Union in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications). Viet Nam shall protect those geographical indications according to the level of protection provided for in this Agreement.

2. Having completed an opposition procedure and an examination of the geographical indications of Viet Nam listed in Part B of Annex 12-A (List of Geographical Indications), the Union recognises that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by Viet Nam in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications). The Union shall protect those geographical indications according to the level of protection provided for in this Agreement.

ARTICLE 12.26

Amendment of the List of Geographical Indications

1. The Parties may amend the list of geographical indications in Annex 12-A (List of Geographical Indications) in accordance with the procedure set out in subparagraph 3(a) of Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications) and paragraph 1 of Article 17.5 (Amendments) by, *inter alia*:

(a) removing geographical indications which have ceased to be protected in the country of origin; or

(b) adding geographical indications, after having completed the opposition procedure and after having examined the geographical indications as referred to in Article 12.25 (Established Geographical Indications) to the satisfaction of both Parties.

2. A geographical indication for wines, spirits, agricultural products or foodstuffs shall not, in principle, be added to Annex 12-A (List of Geographical Indications), if it is a name that on the date of signing of this Agreement is listed in the relevant register of a Party with a status of "Registered".

ARTICLE 12.27

Protection of Geographical Indications

1. Each Party shall provide the legal means for interested parties to prevent:

(a) the use of a geographical indication of the other Party listed in Annex 12-A (List of Geographical Indications) for any product that falls within the product class, as defined in Annex 12-B (Product Classes) and specified in Annex 12-A (List of Geographical Indications) for that geographical indication, and that either:

(i) does not originate in the country of origin specified in Annex 12-A (List of Geographical Indications) for that geographical indication; or

(ii) originates in the country of origin specified in Annex 12-A (List of Geographical Indications) for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product was for consumption in the other Party;

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

2. The protection referred to in subparagraph 1(a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

3. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which 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. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

4. When a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country which is homonymous with a geographical indication of the other Party protected under this Sub-Section, it shall inform the other Party thereof and give it an opportunity to comment before the third country's geographical indication becomes protected.

5. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be, protected in its country of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the country of origin. Such notification shall take place in accordance with paragraph 3 of Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications).

6. A Party shall not be required to protect as a geographical indication a name that is likely to mislead the consumer as to the true origin of the product in case it conflicts with the name of a plant variety or an animal breed.

ARTICLE 12.28

Exceptions

1. Notwithstanding Article 12.27 (Protection of Geographical Indications), the protection of the geographical indications "Asiago", "Fontina" and "Gorgonzola" listed in Part A of Annex 12-A (List of Geographical Indications) shall not prevent the use of any of these indications in the territory of Viet Nam by any persons, including their successors, who made actual commercial use in good faith of those indications with regard to products in the class of "cheeses" prior to 1 January 2017.

2. Notwithstanding Article 12.27 (Protection of Geographical Indications), the protection of the geographical indication "Feta" listed in Part A of Annex 12-A (List of Geographical Indications) shall not prevent the use of this indication in the territory of Viet Nam by any persons, including their successors, who made actual commercial use in good faith of this indication with regard to products in the class of "cheeses" made from sheep's milk or made from sheep and goat's milk, prior to 1 January 2017.

3. Notwithstanding Article 12.27 (Protection of Geographical Indications), during a transitional period of 10 years from the date of entry into force of this Agreement the protection of the geographical indication "Champagne", listed in Part A of Annex 12-A (List of Geographical Indications) shall not prevent the use of this indication, or its translation, transliteration or transcription in the territory of Viet Nam by any persons including their successors, who made actual commercial use in good faith of this indication with regard to products in the class of "wines".

4. A Party may provide that any request made under this Sub-Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

5. This Sub-Section shall not 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 as to mislead the public.

ARTICLE 12.29

Right of Use of Geographical Indications

Once a geographical indication is protected under this Agreement, the legitimate use of such geographical indication shall not be subject to any registration of users, or further charges.

ARTICLE 12.30

Relationship to Trademarks

1. When a trademark has been applied for or registered in good faith, or when rights to a trademark have been acquired through use in good faith, in a Party before the applicable date set out in paragraph 2, measures adopted to implement this Sub-Section in that Party shall not prejudice eligibility for or the validity of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.

2. For the purposes of paragraph 1, the applicable date is:

(a) the date of entry into force of this Agreement with regard to geographical indications referred to in Article 12.25 (Established Geographical Indications); or

(b) the date on which the competent authority of a Party receives from the other Party a request with a complete application for the protection of an additional geographical indication as referred to in Article 12.26 (Amendment of the List of Geographical Indications).

3. A trademark as referred to in paragraph 1 may continue to be protected, used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the domestic legislation on trademarks of the Party concerned.

ARTICLE 12.31

Enforcement of Protection

1. Each Party shall provide for enforcement of protection of geographical indications by appropriate administrative action, to the extent provided for by its domestic law, to prohibit a person from manufacturing, preparing, packaging, labelling, selling, importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.

2. Each Party shall at least enforce the protection provided for in Articles 12.27 (Protection of Geographical Indications) and 12.30 (Relationship to Trademarks) at the request of an interested party.

ARTICLE 12.32

General Rules

1. Products bearing protected geographical indications shall comply with the product specifications, including any amendments thereof, approved by the authorities of the Party in the territory of which the product originates.

2. Any matter arising from product specifications of registered products shall be dealt with in the Working Group on Intellectual Property Rights, including Geographical Indications, referred to in Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications).

ARTICLE 12.33

Cooperation and Transparency

1. The Parties shall, either directly or through the Working Group on Intellectual Property Rights, including Geographical Indications, referred to in Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications), maintain contact on all matters relating to the implementation and functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications, including any amendments thereto, and relevant contact points for control or management of geographical indications.

2. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to this Sub-Section.

SUB-SECTION 4

INDUSTRIAL DESIGNS

ARTICLE 12.34

International Treaties

The Parties shall accede to the *Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva on 2 July 1999, within two years from the date of entry into force of this Agreement.

ARTICLE 12.35

Protection of Registered Industrial Designs

1. The Parties shall provide for the protection of independently created industrial designs[1] that are new or original[2]. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.[3]

[1] The Parties agree that when the domestic law of a Party so provides, a design means the appearance of the whole product or a separable or inseparable part of product.

[2] The Parties agree that when the domestic law of a Party so provides, individual character of designs can also be required. This refers to designs that significantly differ from known designs or combinations of known designs' features. The Union considers designs to have individual character if the overall impression it produces on the informed users differs from the overall impression produced on such a user by any design which has been made available to the public.

[3] It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:
(a) fulfil any other criteria for design protection; and
(b) are not otherwise excluded from design protection,
in accordance with the Parties' respective domestic law.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

3. The term "normal use" in subparagraph 2(a) means use by the end user, excluding maintenance, servicing or repair work.

4. The owner of a registered design shall have the right to prevent third parties not having the owner's consent at least from making, offering for sale, selling, importing, or stocking for sale a product bearing or embodying the protected design when such acts are undertaken for commercial purposes.

5. The duration of protection available shall amount to at least 15 years.

ARTICLE 12.36

Exceptions and Exclusions

1. A Party may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs, and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

2. Industrial design protection shall not extend to designs dictated essentially by technical or functional considerations.

ARTICLE 12.37

Relationship to Copyright

A design shall also be eligible for protection under the law of copyright of a Party as from the date on which the design was created or, alternatively, fixed in any form. The eligibility for protection, the extent to which, and the conditions under which, such a copyright protection is conferred, including the level of originality required, shall be determined by that Party.

SUB-SECTION 5

PATENTS

ARTICLE 12.38

International Agreements

The Parties affirm their rights and obligations under the *Patent Cooperation Treaty*, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001. Each Party shall simplify and develop its patent registration procedures using, *inter alia*, the *Patent Law Treaty*, adopted in Geneva on 1 June 2000, as a reference point.

ARTICLE 12.39

Patents 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, in Doha. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely upon this Declaration.

2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*.

ARTICLE 12.40

Administrative Authorisation

1. The Parties recognise that pharmaceutical products protected by a patent on their respective territory are generally subject to an administrative authorisation procedure before being put on their market (hereinafter referred to as the "marketing authorisation procedure").

2. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays[1] in the granting of the first marketing authorisation in its respective territory. Such compensation may be in the form of an extension of the duration of the rights conferred by patent protection, equal to the time by which the period referred to in the footnote to this paragraph is exceeded. The maximum duration of this extension shall not exceed two years.

[1] For the purposes of this Article, an unreasonable delay shall include at least a delay of more than two years in the first response to the applicant following the date of filing of the application for marketing authorisation. Any delays that occur in the granting of a marketing authorisation due to periods attributable to the applicant or any period that is out of control of the marketing authorisation authority need not be included in the determination of such delay.

3. As an alternative to paragraph 2, a Party may make available an extension, not exceeding five years[1], of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the marketing authorisation procedure. The duration of the extension shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first marketing authorisation to place the product on the market in the Party, reduced by a period of five years.

SUB-SECTION 6

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 12.41

Protection of Undisclosed Information

1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided for in Article 10*bis* of the Paris Convention, each Party shall protect confidential information and data submitted to government or governmental agencies in accordance with this Article.

[1] This period can be extended for further six months in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

2. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public.

3. Each Party shall provide that for data referred to in paragraph 2 that is submitted to the Party after the date of entry into force of this Agreement, no other applicant for marketing approval may, without permission of the person that submitted the data, rely on that data in support of an application for marketing approval during a reasonable period, which shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product.

SUB-SECTION 7

PLANT VARIETIES RIGHTS

ARTICLE 12.42

Plant Varieties Rights

The Parties shall protect plant varieties rights in accordance with the *International Convention for the Protection of New Varieties of Plants*, adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991, including the exceptions to the breeder's right as referred to in Article 15 of this Convention, and cooperate to promote and enforce these rights.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

GENERAL ENFORCEMENT PROVISIONS

ARTICLE 12.43

General Obligations

1. The Parties affirm their rights and obligations under the TRIPS Agreement, in particular Part III thereof. Each Party shall provide for the complementary measures, procedures and remedies under this Section 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.

[1] For the purposes of Sub-Section 1 of Section C (Enforcement of Intellectual Property Rights), the term "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; rights of the creator of the topographies of a semi-conductor product; trademark rights; design rights; patent rights; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as intellectual property rights in the domestic law concerned.

2. The measures, procedures and remedies referred to in paragraph 1 shall be effective and proportionate 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.

ARTICLE 12.44

Entitled Applicants

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 provisions of the applicable law;

(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 provisions of the applicable law;

(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 provisions of the applicable law; 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 provisions of the applicable law.

SUB-SECTION 2

CIVIL ENFORCEMENT

ARTICLE 12.45

Provisional Measures

1. Each Party shall ensure that its competent judicial authorities, upon request by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, have the authority to order prompt and effective provisional measures to:

(a) prevent an infringement of any intellectual property right from occurring, and, in particular, to prevent the entry into, and the movement within, the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance:

(i) an interlocutory injunction may be issued against a party whose services are being used by a third party to infringe an intellectual property right and over whom the relevant judicial authority exercises jurisdiction; and

(ii) in the case of an alleged infringement that is committed on a commercial scale, the Parties shall ensure that, if the applicant referred to in Article 12.44 (Entitled Applicants) demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure or blocking of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets;

and

(b) preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information, which 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 these goods, and the documents relating thereto.

2. Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the judicial authorities shall have the authority to adopt the provisional measures referred to in paragraph 1 without the other party being heard.

3. This Article is without prejudice to Article 50 of the TRIPS Agreement.

ARTICLE 12.46

Evidence

1. Each Party shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims and which has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, a Party may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.

2. In the case of an infringement committed on a commercial scale each Party shall take such measures as are necessary 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.

ARTICLE 12.47

Right of Information

1. Without prejudice to its domestic law governing the protection of confidentiality of information or processing of personal data, each Party shall ensure that, in civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the applicant, the competent judicial authorities may order the infringer, the alleged infringer or any other person to provide information, as provided for in its domestic laws and regulations, that this person possesses or controls.

For the purposes of this paragraph, the term "any other person" may include a person who 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 this paragraphs being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services.

2. The information referred to in paragraph 1 may include information regarding any person involved on a commercial scale in the infringement or alleged infringement and regarding the means of production and distribution networks of the infringing goods or services.

ARTICLE 12.48

Other Remedies

1. Each Party shall ensure that the competent judicial authorities shall have the authority to order, upon 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 in such a manner as to minimise the risks of further infringements:

(a) the recall from the channels of commerce;[1]

(b) the disposal outside the channels of commerce; or

(c) the destruction,

of goods that they have found to be infringing an intellectual property right.

[1] Each Party shall ensure that this provision applies to infringing goods found in the channels of commerce and that infringers should be ordered to at least recall the goods back from their customers, such as wholesalers, distributors, retailers.

The competent judicial authorities may also order destruction of materials and implements, the predominant use of which has been in the creation or manufacture of the infringing goods, or their disposal outside the channels of commerce in such a manner as to minimise the risks of further infringement.

2. The competent judicial authorities shall have the authority to order that the remedies referred to in paragraph 1, at least for the destruction, including the removal from the channels of commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 12.49

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 and, where appropriate, against a party whose services are being used by the infringer and over whom the judicial authority exercises jurisdiction, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 12.50

Alternative Measures

A Party may provide that, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article 12.48 (Other Remedies) or Article 12.49 (Injunctions), the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 12.48 (Other Remedies) and Article 12.49 (Injunctions) if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 12.51

Damages

1. Each Party shall ensure that the competent judicial authorities have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right-holder damages to compensate for the actual injury the right holder has suffered as a result of the infringement.

In determining the amount of damages for infringement of intellectual property rights, the competent judicial authorities shall have the authority to:

(a) 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[1] and, in appropriate cases, elements other than economic factors[2]; and

(b) in appropriate cases, set the damages as a lump sum on the basis of elements such as, at least 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 engage, knowingly or with reasonable grounds to know, in infringing activity, a Party may provide that the competent judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

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1 The calculation of unfair profits made by the infringer shall not be duplicated in calculating lost profits.

2 The term "elements other than economic factors" shall include moral prejudice caused by the infringement of moral rights of inventors or authors.

ARTICLE 12.52

Legal Costs

Each Party shall provide that the competent judicial authorities, as a general rule and, where appropriate, have the authority to order that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.

ARTICLE 12.53

Publication of Judicial Decisions

The competent judicial authorities shall have the authority to order, pursuant to its domestic law and policies, the publishing or making available to the public, at the expense of the infringer, appropriate information concerning the final judicial decision.

ARTICLE 12.54

Presumption of Authorship or Ownership

The Parties recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Chapter it is sufficient for the name of an author of a literary or artistic work, and for the name of other right holders with regard to their protected subject-matter, to appear on the work or protected subject-matter in the usual manner in order for that author or other right holder to be regarded as such, unless there is proof to the contrary, and consequently to be entitled to institute infringement proceedings.

SUB-SECTION 3

INTERMEDIARY SERVICE PROVIDER

ARTICLE 12.55

Liability of Intermediary Service Provider

1. Each Party shall, in accordance with this Article, provide for limitations or exemptions in its domestic legislation regarding the liability of intermediary service providers, in relation to the provision or use of their services, for infringements of copyright or related rights that take place on or through telecommunication networks[1].

2. The limitations or exemptions referred to in paragraph 1 shall cover at least the following activities:

(a) the transmission in a telecommunication network of information provided by a user of the service, or the provision of access to a telecommunication network ("mere conduit");

[1] For greater certainty, this includes the Internet.

(b) the transmission in a telecommunication network of information provided by a user of the service concerning the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other users of the service upon their request ("caching"), on condition that the provider:

(i) does not modify the information other than for technical reasons;

(ii) complies with conditions on access to the information;

(iii) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

(iv) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

(v) removes or disables access to the information it has stored upon obtaining knowledge[1] of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled;

and

[1] Nothing in this Chapter precludes either Party from defining in its domestic law conditions for determining how the knowledge of illegal information being hosted is obtained.

(c) the storage of information provided by a user of the service at the request of a user of the service ("hosting") on condition that the provider:

(i) does not have the knowledge of illegal information; and

(ii) upon obtaining such knowledge[1], acts expeditiously to remove or to disable access to information.

3. Each Party may in its domestic law, provide for conditions under which intermediary service providers do not qualify for the limitations or exceptions in paragraph 2.

4. The eligibility conditions for intermediary service providers to qualify for the limitations or exceptions in paragraph 2 may not include the intermediary service provider monitoring its service, or seeking facts indicating infringing activity.

5. Each Party may establish procedures for effective notifications of claimed infringement, and effective counter-notifications.

6. This Article shall not affect the possibility for a court or administrative authority, in accordance with each Party's legal system, to require the intermediary service provider to terminate or prevent an infringement.

[1] Nothing in this Chapter precludes either Party from defining in its domestic law conditions for determining how the knowledge of illegal information being hosted is obtained.

SUB-SECTION 4

BORDER ENFORCEMENT

ARTICLE 12.56

Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs authorities, as set out in this Sub-Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

ARTICLE 12.57

Definitions

For the purposes of this Sub-Section:

(a) "counterfeit goods" means counterfeit trademark goods and counterfeit geographical indication goods;

(b) "counterfeit geographical indication goods" means goods, including packaging, unlawfully bearing a geographical indication identical with the geographical indication validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a geographical indication, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the geographical indication in question according to the law of the Party where the goods are found;

(c) "counterfeit trademark goods" means goods, including packaging, bearing without authorisation a trademark which is identical with the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the owner of the trademark in question according to the law of the Party where the goods are found;

(d) "export goods" means goods which are to be taken from the territory of a Party to a place outside that territory, while those goods remain under customs control;

(e) "goods infringing an intellectual property right" means counterfeit goods and pirated copyright goods the importation or exportation of which, according to the law of the Party where the goods are found, infringe an intellectual property right;

(f) "import goods" means goods brought into the territory of a Party from a place outside that territory, while those goods remain under customs control; and

(g) "pirated copyright goods" means goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy, as well as importation or exportation would have constituted an infringement of a copyright or a related right under the law of the Party of importation or exportation, respectively.

ARTICLE 12.58

Scope of Border Measures

1. With respect to import and export goods, each Party shall adopt or maintain procedures under which a right holder can submit applications requesting customs authorities to suspend the import or export of goods suspected of infringing intellectual property rights.

2. The customs authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing an intellectual property right.

ARTICLE 12.59

Active Involvement of Customs Authorities

The customs authorities shall, on the basis of risk analysis techniques, be active in targeting and identifying shipments containing import and export goods suspected of infringing intellectual property rights. They shall cooperate with right holders, including allowing the provision of information for risk analysis.

ARTICLE 12.60

Specific Cooperation in the Area of Border Measures

1. Without prejudice to subparagraph 2(a) of Article 4.2 (Customs Cooperation and Mutual Administrative Assistance), the Parties shall, where appropriate, promote cooperation and exchange of information and best practices between their customs authorities to enable effective border controls for the purposes of enforcement of intellectual property rights, particularly in order to effectively implement Article 69 of the TRIPS Agreement.

2. With regard to the customs enforcement of intellectual property rights the customs authorities of the Parties shall provide each other with mutual administrative assistance in accordance with Protocol 2 (Mutual Administrative Assistance in Customs Matters).

3. Without prejudice to Article 17.1 (Trade Committee), the Committee on Customs referred to in Article 17.2 (Specialised Committees), shall be responsible to ensure the proper functioning and implementation of this Article. The Committee on Customs shall set the priorities and provide for the adequate procedures for cooperation between the competent authorities.

SUB-SECTION 5

OTHER PROVISIONS RELATING TO ENFORCEMENT

ARTICLE 12.61

Codes of Conduct

The Parties shall encourage:

(a) the development, by trade or professional associations or organisations, of codes of conduct aimed at contributing towards the enforcement of intellectual property rights; and

(b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of those codes of conduct.

SECTION D

COOPERATION AND INSTITUTIONAL PROVISIONS

ARTICLE 12.62

Cooperation

1. The Parties shall cooperate with a view to supporting the implementation of this Chapter.

2. Subject to Chapter 16 (Cooperation and Capacity Building), 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 relevant rules of protection and enforcement as well as exchange of experiences between the Union and Viet Nam on legislative progress;

(b) exchange of experiences and information between the Union and Viet Nam on enforcement of intellectual property rights;

(c) exchange of experiences between the Union and Viet Nam on enforcement at central and sub-central levels by customs, police, administrative and judiciary bodies as well as coordination of their actions to prevent exports of counterfeit goods, including with other countries;

(d) capacity building, and exchange and training of personnel;

(e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles, socio-professional and social organisations as well as promotion of public awareness of consumers and right holders;

(f) enhancement of intergovernmental cooperation between, *inter alia*, intellectual property offices; and

(g) active promotion of awareness and education of the general public on intellectual property rights policies by formulating effective strategies to identify key audiences and creating communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.

3. Without prejudice to paragraphs 1 and 2, the Parties agree to address, as necessary, topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and also any other relevant issue in the Working Group on Intellectual Property Rights, including Geographical Indications, established pursuant to Article 17.3 (Working Groups).

ARTICLE 12.63

Working Group on Intellectual Property Rights,
including Geographical Indications

1. The Working Group on Intellectual Property Rights, including Geographical Indications, established pursuant to Article 17.3 (Working Groups), shall consist of representatives of the Parties for the purposes of monitoring the implementation of this Chapter, intensifying their cooperation and holding dialogues on intellectual property rights, including geographical indications.

2. The Working Group on Intellectual Property Rights, including Geographical Indications may consider any matter related to the implementation and operation of this Chapter. In particular, it shall be responsible for:

(a) preparing a recommendation for the Parties to amend Annex 12-A (List of Geographical Indications) as regards geographical indications in accordance with Article 12.26 (Amendment of the List of Geographical Indications);

(b) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications; and

(c) exchanging information on geographical indications for the purposes of considering their protection in accordance with this Sub-Section 3 (Geographical Indications) of Section B (Standards Concerning Intellectual Property Rights).

CHAPTER 13

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 13.1

Objectives

1. The objective of this Chapter is to promote sustainable development, notably by fostering the contribution of trade and investment related aspects of labour and environmental issues.

2. The Parties recall the *Agenda 21 on Environment and Development* of 1992, the *Johannesburg Plan of Implementation of the World Summit on Sustainable Development* of 2002, the *Ministerial Declaration of the United Nations Economic and Social Council on Full Employment and Decent Work* of 2006, the *International Labour Organization* (hereinafter referred to as "ILO") *Decent Work Agenda*, the *Outcome Document of the United Nations Conference on Sustainable Development* of 2012, entitled "*The future we want*", and the *Outcome Document of the United Nations Summit on Sustainable Development* of 2015, entitled "*Transforming Our World: the 2030 Agenda for Sustainable Development*". They affirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations. The objective of sustainable development shall be integrated in their bilateral trade relationship.

3. The Parties affirm their commitment to pursue sustainable development, which consists of economic development, social development and environmental protection all three being inter-dependent and mutually reinforcing.

4. The Parties underline the benefits of cooperating on trade-related labour[1] and environmental issues as part of the global approach to trade and sustainable development.

5. This Chapter embodies a cooperative approach based on common values and interests, taking into account the differences in the Parties' respective levels of development.

ARTICLE 13.2

Right to Regulate and Levels of Protection

1. The Parties recognise their respective right to:

(a) determine its sustainable development objectives, strategies, policies and priorities;

(b) establish its own levels of domestic protection in the environmental and social areas as it deems appropriate; and

[1] For the purposes of this Chapter, "labour issues" mean those under the Decent Work Agenda, as referred to in the *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session, in Geneva on 10 June 2008.

(c) adopt or modify accordingly its relevant laws and policies in a manner consistent with the internationally recognised standards, and the agreements, to which a Party is party, referred to in Articles 13.4 (Multilateral Labour Standards and Agreements) and 13.5 (Multilateral Environmental Agreements).

2. Each Party shall endeavour to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas and shall continuously endeavour to improve those laws and policies.

ARTICLE 13.3

Upholding Levels of Protection

1. The Parties stress that weakening the levels of protection in environmental or labour areas is detrimental to the objectives of this Chapter and that it is inappropriate to encourage trade and investment by weakening the levels of protection afforded in domestic environmental or labour law.

2. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws, in a manner affecting trade and investment between the Parties.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws, as an encouragement for trade and investment.

4. A Party shall not apply environmental and labour laws in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

ARTICLE 13.4

Multilateral Labour Standards and Agreements

1. The Parties recognise the importance of full and productive employment and decent work for all, in particular as a response to globalisation. The Parties reaffirm their commitment to promote the development of their bilateral trade in a way that is conducive to full and productive employment and decent work for all, including for women and young people. In this context, the Parties shall consult and cooperate, as appropriate, on trade-related labour issues of mutual interest.

2. Each Party reaffirms its commitments, in accordance with its obligations under the ILO and the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference at its 86th Session in 1998, to respect, promote and effectively implement the principles concerning the fundamental rights at work, namely:

(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; and

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

3. Each Party shall:

(a) make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions;

(b) consider the ratification of other conventions that are classified as up to date by the ILO, taking into account its domestic circumstances; and

(c) exchange information with the other Party with regard to the ratifications mentioned in subparagraphs (a) and (b).

4. Each Party reaffirms its commitment to effectively implement in its domestic laws and regulations and practice the ILO conventions ratified by Viet Nam and the Member States of the Union, respectively.

5. 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.

ARTICLE 13.5

Multilateral Environmental Agreements

1. The Parties recognise the value of multilateral environmental governance and agreements as a response of the international community to environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment. The Parties shall consult and cooperate, as appropriate, with respect to trade-related environmental issues of mutual interest.

2. Each Party reaffirms its commitment to effectively implement in its domestic law and practice the multilateral environmental agreements to which it is party.

3. The Parties shall exchange in the Committee on Trade and Sustainable Development and, as appropriate, on other occasions, information and experiences on their respective situation and progress with regard to the ratification of multilateral environmental agreements or their amendments.

4. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is a party, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

ARTICLE 13.6

Climate Change

1. In order to address the urgent threat of climate change, the Parties reaffirm their commitment to reaching the ultimate objective of the *United Nations Framework Convention on Climate Change* of 1992 (hereinafter referred to as "UNFCCC") and to effectively implementing the UNFCCC, the *Kyoto Protocol to the United Nations Framework Convention On Climate Change*, as last amended on 8 December 2012 (hereinafter referred to as "Kyoto Protocol"), and the *Paris Agreement*, done at 12 December 2015, established thereunder. The Parties shall cooperate on the implementation of the UNFCCC, the Kyoto Protocol and the *Paris Agreement*. The Parties shall, as appropriate, cooperate and promote the positive contribution of this Chapter to enhance the capacities of the Parties in the transition to low greenhouse gas emissions and climate-resilient economies, in accordance with the Paris Agreement.

2. Within the UNFCCC framework, the Parties recognise the role of domestic policies in addressing climate change. Accordingly, the Parties shall consult and share information and experiences of priority or of mutual interest, including:

(a) best practices and lessons learned in designing, implementing, and operating mechanisms for pricing carbon;

(b) promotion of domestic and international carbon markets, including through mechanisms such as Emissions Trading Schemes and Reducing Emissions from Deforestation and Forest Degradation; and

(c) promotion of energy efficiency, low-emission technology and renewable energy.

ARTICLE 13.7

Biological Diversity

1. The Parties recognise the importance of ensuring the conservation and sustainable use of biological diversity in accordance with the *Convention on Biological Diversity* of 1992 (hereinafter referred to as "CBD") and the *Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, adopted at the tenth meeting of the Conference of the Parties in Nagoya on 18 to 29 October 2010, *Convention on International Trade in Endangered Species of Wild Fauna and Flora,* as last amended in Gaborone in 1983 (hereinafter referred to as "CITES"), and other relevant international instruments to which they are party, as well as the decisions adopted thereunder.

2. The Parties recognise, in accordance with Article 15 of the CBD, the sovereign rights of states over their natural resources and that the authority to determine access to their genetic resources rests with their respective governments and is subject to their domestic law. The Parties shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD. The Parties recognise that access to genetic resources shall be subject to the prior informed consent of the Party providing genetic resources, unless otherwise determined by that Party.

3. To this end, each Party shall:

(a) encourage trade in products which contribute to the sustainable use and conservation of biological diversity, in accordance with its domestic laws and regulations;

(b) promote and encourage the conservation and sustainable use of biological diversity, including access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation;

(c) exchange information with the other Party on actions such as strategies, policy initiatives, programmes, action plans, consumers' awareness campaigns of relevance in a trade context which aim at halting the loss of biological diversity and reducing pressures on biological diversity and, where relevant, cooperate to maximise the impact and ensure the mutual supportiveness of its respective policies;

(d) adopt and implement appropriate effective measures, which are consistent with its commitments under international treaties to which it is a party, leading to a reduction of illegal trade in wildlife, such as awareness raising campaigns, monitoring and enforcement measures;

(e) enhance cooperation with the other Party, as appropriate, to propose new animal and plant species to be included in Appendices I and II to the CITES; and

(f) cooperate with the other Party at regional and global levels, as appropriate, with the aim of promoting the conservation and sustainable use of biological diversity in natural or agricultural ecosystems, including endangered species, their habitat, specially protected natural areas and genetic diversity; the restoration of ecosystems; the elimination or reduction of negative environmental impacts resulting from the use of living and non-living natural resources, including ecosystems; the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

ARTICLE 13.8

Sustainable Forest Management and Trade in Forest Products

1. The Parties recognise the importance of ensuring the conservation and sustainable management of forest resources in contributing to their economic, environmental and social objectives.

2. To this end, each Party shall:

(a) encourage the promotion of trade in forest products from sustainably managed forests and harvested in accordance with the domestic legislation of the country of harvest; this may include the conclusion of a *Forest Law Enforcement Governance and Trade ("FLEGT") Voluntary Partnership Agreement*;

(b) exchange information with the other Party on measures to promote consumption of timber and timber products from sustainably managed forests and, where relevant, cooperate to develop such measures;

(c) adopt measures which are consistent with domestic laws and international treaties to which it is a party, to promote the conservation of forest resources and combat illegal logging and related trade;

(d) exchange information with the other Party on actions, as appropriate, to improve forest law enforcement and, where relevant, cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies aiming at excluding illegally harvested timber and timber products from trade flows; and

(e) cooperate with the other Party at regional and global levels, as appropriate, with the aim of promoting the conservation and sustainable management of all types of forests.

ARTICLE 13.9

Trade and Sustainable Management of Living Marine Resources
and Aquaculture Products

1. The Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems as well as the promotion of responsible and sustainable aquaculture.

2. To this end, each Party shall:

(a) comply with long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the *United Nations Convention on the Law of the Sea of 1982*; encourage compliance with the *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 24 July to 4 August 1995, the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, approved by the Food and Agriculture Organization Conference at its 27th Session in November 1993, and the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, approved by the Food and Agriculture Organization Conference on 22 November 2009; and adhere to the principles of the *Code of Conduct for Responsible Fisheries*, adopted by the Food and Agriculture Organization Conference in Cancun on 31 October 1995;

(b) cooperate with the other Party, as appropriate, with and within Regional Fisheries Management Organisations to which it is a member, observer or cooperating non-contracting party, including through effective application of their monitoring, control and surveillance and enforcement of management measures and, where applicable, implement their Catch Documentation or Certification Schemes;

(c) cooperate with the other Party and actively engage in the fight against illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing and fishing-related activities with comprehensive, effective and transparent measures to combat IUU. Each Party shall also facilitate the exchange of information on IUU activities and implement policies and measures to exclude products resulting from IUU from trade flows;

(d) promote the development of sustainable aquaculture, taking into account its economic, social and environmental aspects; and

(e) exchange information on all new measures on management of living marine resources and fishery products that may impact trade between the Parties, in the Committee on Trade and Sustainable Development and, as appropriate, on other occasions.

ARTICLE 13.10

Trade and Investment Favouring Sustainable Development

1. Each Party affirms its commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

2. To that end, the Parties:

(a) recognise the beneficial role that decent work may have for economic efficiency, innovation and productivity, and they shall encourage greater policy coherence between trade policies, on the one hand, and labour policies on the other;

(b) shall endeavour to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with this Agreement;

(c) shall endeavour to facilitate trade and investment in goods and services of particular relevance for climate change mitigation, such as sustainable renewable energy and energy efficient goods and services, including through the development of policy frameworks conducive to the deployment of best available technologies;

(d) recognise that voluntary initiatives can contribute to the achievement and maintenance of high levels of environmental and labour protection and complement domestic regulatory measures; therefore each Party in accordance with its domestic laws or policies, shall encourage the development of, and participation in, such initiatives, including voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels; and

(e) in accordance with their domestic laws or policies agree to promote corporate social responsibility, provided that measures related thereto are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade. Measures for the promotion of corporate social responsibility include, among others, exchange of information and best practices, education and training activities and technical advice. In this regard, each Party takes into account relevant internationally agreed instruments that have been endorsed or are supported by that Party, such as the *Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises*, the *United Nations Global Compact* and the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.

ARTICLE 13.11

Scientific Information

When preparing and implementing measures aimed at protecting the environment or labour conditions that may affect trade and investment, each Party shall take into account relevant available scientific, technical and innovation-related information, and relevant international standards, guidelines or recommendations, including the precautionary principle.

ARTICLE 13.12

Transparency

Each Party shall, in accordance with its domestic law and Chapter 14 (Transparency), ensure that any measures aimed at protecting the environment and labour conditions that may affect trade and investment are developed, introduced and implemented in a transparent manner, with due notice and an opportunity to interested persons to provide their views.

ARTICLE 13.13

Review of Sustainability Impacts

The Parties shall, jointly or individually, review, monitor and assess the impact of the implementation of this Agreement on sustainable development through their respective policies, practices, participative processes and institutions.

ARTICLE 13.14

Working Together on Trade and Sustainable Development

1. The Parties, recognising the importance of working together on trade-related aspects of sustainable development in order to achieve the objectives of this Chapter, may work together in, *inter alia*, the following areas:

(a) trade and sustainable development in international *fora*, including the ILO, the Asia-Europe Meeting, the United Nations Environment Programme and under multilateral environmental agreements;

(b) exchange of information and experience with regard to methodologies and indicators for impact assessments on trade sustainability;

(c) the impact of labour and environment laws, regulations, norms and standards, on trade or investment as well as the impact of trade or investment rules on labour and environment, including on the development of strategies and policies on sustainable development;

(d) sharing experience on promoting the ratification and implementation of fundamental, priority and other up-to-date ILO conventions and multilateral environmental agreements of relevance to trade;

(e) trade-related aspects of the *ILO Decent Work Agenda*, in particular the inter-linkage between trade and full and productive employment for all, including youth, women and people with disabilities, labour market adjustment, core and other international labour standards, labour statistics, human resources development and lifelong learning, social protection for all including for vulnerable and disadvantaged groups, such as migrant workers, women, youth and people with disabilities, and social inclusion, social dialogue and gender equality;

(f) trade-related aspects of multilateral environmental agreements, including customs cooperation;

(g) trade-related aspects of the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency;

(h) sharing information and experience about certification and labelling schemes, including eco-labelling;

(i) promoting corporate social responsibility and accountability, including with regard to the internationally agreed instruments that have been endorsed or are supported by each Party;

(j) trade-related measures to promote the conservation and sustainable use of biological diversity, including the mapping, assessment and valuation of ecosystems and their services, and to combat illegal international trade in wildlife;

(k) trade-related measures to promote the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging;

(l) trade-related measures to promote sustainable fishing practices and trade in sustainably managed fish products; and

(m) 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.

2. The Parties shall share information and experience for the purposes of developing and implementing cooperation and capacity-building activities on trade and sustainable development.

3. In accordance with Chapter 16 (Cooperation and Capacity Building), the Parties may work together in the areas referred to in paragraph 1 by means of, *inter alia*:

(a) workshops, seminars, training and dialogues to share knowledge, experiences and best practices;

(b) studies; and

(c) technical assistance and capacity building, as appropriate.

The Parties may agree other forms of cooperation.

ARTICLE 13.15

Institutional Provisions

1. Each Party shall designate a contact point within its administration for the purposes of implementing this Chapter.

2. The Committee on Trade and Sustainable Development established pursuant to Article 17.2 (Specialised Committees) shall comprise senior officials from the relevant administrations of each Party or officials they designate.

3. The Committee on Trade and Sustainable Development shall meet within the first year after the date of entry into force of this Agreement, and thereafter as necessary, to review the implementation of this Chapter, including cooperation under Article 13.14 (Working Together on Trade and Sustainable Development). The Committee on Trade and Sustainable Development shall establish its own rules of procedure, and reach its conclusions by mutual agreement.

4. Each Party shall convene a new or consult an existing domestic advisory group or groups on sustainable development with the task of advising on the implementation of this Chapter. Each Party shall decide on its domestic procedures for the establishment of its domestic advisory group or groups and the appointment of the members of such group or groups. The group or groups shall comprise independent representative organisations, ensuring a balanced representation of economic, social and environmental stakeholders, including, among others, employers' and workers' organisations, business groups, and environmental organisations. Each domestic advisory group may, on its own initiative, submit views or recommendations to its respective Party on the implementation of this Chapter.

5. Members of the domestic advisory group or groups of each Party shall meet in a joint forum to conduct a dialogue on sustainable development aspects of trade relations between the Parties. By joint agreement, domestic advisory groups of both Parties may involve other stakeholders in meetings of the joint forum. The forum shall be based on a balanced representation of economic, social and environmental stakeholders. The report of each meeting of the joint forum shall be submitted to the Committee on Trade and Sustainable Development and thereafter be made publicly available.

6. Unless the Parties agree otherwise, the joint forum shall meet once a year and in conjunction with the meetings of the Committee on Trade and Sustainable Development. On such occasions, the Parties shall present to the joint forum an update on the implementation of this Chapter. The Parties shall agree on the operation of the joint forum no later than one year after the date of entry into force of this Agreement.

ARTICLE 13.16

Government Consultations

1. In the event of disagreement on any matter covered under this Chapter, the Parties shall only have recourse to the procedures established under this Article and Article 13.17 (Panel of Experts). Except as otherwise provided for in this Chapter, Chapter 15 (Dispute Settlement) and its Annex 15-C (Mediation Mechanism) does not apply to this Chapter. Annex 15-A (Rules of Procedure) applies *mutatis mutandis* in accordance with paragraph 2 of Article 13.17 (Panel of Experts).

2. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the problem at issue and providing a brief summary of the claims under this Chapter, including the indication of the relevant provisions thereof and an explanation of how the problem affects the objectives of this Chapter, as well as any other information the Party deems relevant. Consultations shall start promptly after a Party delivers a request for consultations.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. During consultations, special attention shall be given to the particular problems and interests of the Party which is a developing country. Where relevant, the Parties shall give due consideration to the activities of the ILO or relevant multilateral environmental organisations or bodies and may, by mutual agreement, seek advice from these organisations or bodies, or any other body or person they deem appropriate, in order to fully examine the matter.

4. If a Party considers that the matter needs further discussion that Party may, by delivering a written request to the contact point of the other Party, request that the Committee on Trade and Sustainable Development be convened to consider the matter. The Committee on Trade and Sustainable shall convene promptly and endeavour to agree on a resolution of the matter.

5. Where appropriate, the Committee on Trade and Sustainable Development may seek the advice of the domestic advisory group or groups of either Party or both Parties or other expert assistance, with the objective of facilitating its analysis.

6. Any resolution reached by the Parties on the matter shall be made publicly available, unless otherwise mutually decided.

ARTICLE 13.17

Panel of Experts

1. If the matter has not been satisfactorily resolved by the Committee on Trade and Sustainable Development within 120 days, or a longer period agreed by both Parties, after the delivery of a request for consultations under Article 16.4 (Relations with Other Chapters), a Party may request, by delivering a written request to the contact point of the other Party, that a Panel of Experts be convened to examine that matter.

2. The Committee on Trade and Sustainable Development shall, after the entry into force of this Agreement, establish rules of procedures for the Panel of Experts for any procedural matter that is not covered in this Article. Unless the Committee on Trade and Sustainable Development agrees otherwise, pending the establishment of such rules of procedures, the Rules of Procedure set out in Annex 15-A (Rules of Procedure) shall apply *mutatis mutandis*, taking into account the nature of the work of the Panel of Experts.

3. The Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least fifteen individuals who are willing and able to serve on the Panel of Experts. This list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party and who shall act as chairperson of the Panel of Experts. Each Party shall propose for its sub-list at least five individuals to serve as experts. The Parties shall also select at least five individuals for the sub-list of chairpersons. At its meetings, the Committee on Trade and Sustainable Development shall review the list and ensure that it is maintained at least at the level of fifteen individuals.

4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge of, or expertise in, labour or environmental law, issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party. The principles set out in Annex 15-B (Code of Conduct for Arbitrators and Mediators) shall apply to experts *mutatis mutandis*, taking into account the nature of their work.

5. A Panel of Experts shall be composed of three members, unless otherwise agreed by the Parties. Within 30 days of the date of receipt by the responding Party of the request for the establishment of a Panel of Experts, the Parties shall consult in order to reach an agreement on its composition. In the event that the Parties are unable to agree on the composition of the Panel of Experts within this time-frame, they shall select the chairperson from the relevant sub-list referred to in paragraph 3, by mutual agreement or, in the event that they cannot agree within another seven days, by lot. Each Party shall select one expert complying with the requirements referred to in paragraph 4 within 14 days after the end of the 30-days period. The Parties may agree on any other expert complying with the requirements referred to in paragraph 4 to serve on the Panel of Experts. In the event that the composition of the Panel of Experts has not been completed within the time-frame of 44 days from the date of receipt by the responding Party of the request for the establishment of a Panel of Experts, the remaining expert or experts shall be selected within seven days by lot from the sub-list or sub-lists referred to in paragraph 3 among the individuals proposed by the Party or Parties who has or have not completed the procedure. In the event that the list referred to in paragraph 3 has not yet been established, the experts shall be selected by lot from the individuals who have been formally proposed by both Parties or, in the event that only one Party has made its proposal, by one of the Parties. The date of establishment of the Panel of Experts shall be the date on which the last of the three experts is selected.

6. Unless the Parties agree otherwise within seven days from the date of establishment of the Panel of Experts, the terms of reference of the Panel of Experts shall be:

"To examine, in the light of the relevant provisions of the Trade and Sustainable Development Chapter, the matter referred to in the request for the establishment of the Panel of Experts, and to issue reports, in accordance with paragraph 8 of this Article, making recommendations for the solution of the matter.".

7. In matters relating to the respect of the multilateral agreements as set out in Article 13.4 (Multilateral Labour Standards and Agreements) Article 13.5 (Multilateral Environmental Agreements), the Panel should seek information and advice from the ILO or bodies of the relevant multilateral environmental agreement. Any information obtained under this paragraph shall be provided to both Parties for their comments.

8. The Panel of Experts shall issue an interim and a final report to the Parties. These reports shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. The Panel of Experts shall issue the interim report to the Parties not later than 90 days from the date of its establishment. Any Party may submit written comments to the Panel of Experts on the interim report within 45 days of its issuance. After considering any such written comments, the Panel of Experts may modify the report and make any further examination it considers appropriate. The Panel of Experts shall issue the final report to the Parties no later than 150 days from the date of its establishment. Where it considers that the deadlines set in this paragraph cannot be met, the chairperson of the Panel of Experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the Panel of Experts plans to issue its interim or final report. The Panel of Experts shall issue the final report no later than 180 days after the date of its establishment, unless the Parties agree otherwise. This final report shall be made publicly available unless otherwise mutually decided.

9. The Parties shall discuss appropriate actions or measures to be implemented taking into account the final report of the Panel of Experts and the recommendations therein. The Party concerned shall inform its domestic advisory group or groups and the other Party of its decisions on any actions or measures to be implemented no later than 90 days, or a longer period of time mutually agreed by the Parties, after the final report has been submitted to the Parties. The follow-up to the implementation of such actions or measures shall be monitored by the Committee on Trade and Sustainable Development. The domestic advisory group or groups and the joint forum may submit observations to the Committee on Trade and Sustainable Development in this regard.

CHAPTER 14

TRANSPARENCY

ARTICLE 14.1

Objective and Scope

Recognising the impact that regulatory environment and procedures may have on trade and investment, each Party shall promote a predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises.

ARTICLE 14.2

Definitions

For the purposes of this Chapter:

(a) "interested person" means any natural or legal person that may be affected by a measure of general application; and

(b) "measure of general application" includes laws, regulations, judicial decisions, procedures and administrative rulings of general application that may have an impact on any matter covered by this Agreement.

ARTICLE 14.3

Publication

1. Each Party shall ensure that a measure of general application:

(a) is published promptly by means of an officially designated medium, including, where possible, electronic means, in such a manner as to enable governments and interested persons to become acquainted with it; and

(b) allows for a sufficient period of time between publication and entry into force of that measure, except where this is not possible for reasons of urgency.

2. Each Party shall:

(a) endeavour to publish at an early appropriate stage any proposal to adopt or amend any measure of general application, including, upon request, an explanation of the objective of, and rationale for, the proposal;

(b) provide reasonable opportunities for interested persons to comment on any proposal to adopt or amend any measure of general application, allowing, in particular, for sufficient time for such opportunities, except where this is not possible for reasons of urgency; and

(c) endeavour to take into consideration the comments received from interested persons with respect to any proposal to adopt or amend any measure of general application.

ARTICLE 14.4

Enquiries and Contact Points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point in order to ensure the effective implementation of this Agreement and to facilitate communication between the Parties on any matter covered by this Agreement.

2. Upon request of the other Party, the contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

3. Each Party shall, within its available resources, establish or maintain appropriate mechanisms, including those provided for in other Chapters of this Agreement, for responding to enquiries from any interested person regarding any measure of general application which is proposed or in force, and how it would be applied. Enquiries may be addressed through contact points designated under paragraph 1 or any other mechanism as appropriate, unless a specific mechanism is established in this Agreement.

4. Each Party shall provide for mechanisms available to interested persons seeking a solution to problems that have arisen from the application of a measure of general application under this Agreement.

5. The Parties recognise that responses provided pursuant to this Article may not be definitive or legally binding but for information purposes only.

6. Each Party shall provide, upon request, an explanation of the objective of, and rationale for measures of general application.

7. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any measure or proposed measure of general application that the requesting Party considers might materially affect the operation of this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

ARTICLE 14.5

Administration of Measures of General Application

Each Party shall administer in a uniform, objective, impartial and reasonable manner all measures of general application. Each Party, in applying such measures to particular persons, goods or services of the other Party, shall

(a) endeavour to provide interested persons that are directly affected by proceedings, with reasonable notice, in accordance with its domestic procedures, 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 question;

(b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceedings and the public interest permit; and

(c) ensure that its procedures are based on, and in accordance with, its domestic law.

ARTICLE 14.6

Review and Appeal

1. Each Party shall establish or maintain, in accordance with its domestic law, judicial, arbitral or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative action relating to matters covered by this Agreement. Those tribunals and procedures shall be impartial and independent of the office or authority entrusted with administrative enforcement, and shall not have any substantial interest in the outcome of the matter.

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

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

(b) a decision based on the evidence and submissions of record or, where required by its domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 14.7

Good Regulatory Practice and Administrative Behaviour

1. The Parties agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective regulatory reform processes and regulatory impact assessments.

2. The Parties subscribe to the principles of good administrative behaviour and agree to cooperate in promoting such principles, including through the exchange of information and best practices.

ARTICLE 14.8

Specific Rules

This Chapter applies without prejudice to any specific rules established in other Chapters of this Agreement.

CHAPTER 15

DISPUTE SETTLEMENT

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 15.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties regarding the interpretation and application of this Agreement with a view to arriving at a mutually agreed solution.

ARTICLE 15.2

Scope

This Chapter applies with respect to the avoidance and settlement of any dispute between the Parties regarding the interpretation or application of the provisions of this Agreement, except as otherwise provided for in this Agreement.

SECTION B

CONSULTATIONS AND MEDIATION

ARTICLE 15.3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 15.2 (Scope) 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 to the other Party, copied to the Trade Committee, identifying the measure at issue and the relevant provisions of this Agreement.

3. Consultations shall be held within 30 days of the date of receipt of the request referred to in paragraph 2 and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 45 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, in particular all information disclosed and positions taken by the Parties, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable goods, seasonal goods or seasonal services, shall be held within 15 days of the date of receipt of the request referred to in paragraph 2. The consultations shall be deemed concluded within 20 days, unless both Parties agree to continue consultations.

5. The Party that sought consultations may have recourse to Article 15.5 (Initiation of the Arbitration Procedure) if:

(a) the other Party does not respond to the request for consultations within 15 days of the date of its receipt;

(b) the consultations are not held within the timeframes provided for in paragraphs 3 or 4;

(c) the Parties agree not to have consultations; or

(d) the consultations have been concluded without a mutually agreed solution.

6. During consultations each Party shall provide sufficient factual information for an examination of the manner in which the measure at issue could affect the operation and application of this Agreement.

ARTICLE 15.4

Mediation Mechanism

The Parties may at any time agree to enter into a mediation procedure pursuant to Annex 15-C (Mediation Mechanism) with respect to any measure adversely affecting trade or investment between the Parties.

SECTION C

DISPUTE SETTLEMENT PROCEDURES

SUB-SECTION 1

ARBITRATION PROCEDURE

ARTICLE 15.5

Initiation of the Arbitration Procedure

1. If the Parties fail to resolve the dispute by recourse to consultations as provided for in Article 15.3 (Consultations), the Party that sought consultations may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the other Party and copied to the Trade Committee. The complaining Party shall identify the measure at issue in its request, and explain how that measure is inconsistent with the provisions of this Agreement in such a manner as to clearly present the legal basis for the complaint.

ARTICLE 15.6

Terms of Reference of the Arbitration Panel

Unless the Parties agree otherwise within 10 days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.5 (Initiation of the Arbitration Procedure), to rule on the conformity of the measure in question with the provisions referred to in Article 15.2 (Scope), and to make findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, in accordance with Articles 15.10 (Interim Report) and 15.11 (Final Report).".

ARTICLE 15.7

Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to agree on the composition of the arbitration panel.

3. If the Parties do not agree on the composition of the arbitration panel within the time frame provided for in paragraph 2, each Party may appoint an arbitrator from the sub-list of that Party established under Article 15.23 (List of Arbitrators) within 10 days from the expiry of the time frame provided for in paragraph 2. If a Party fails to appoint an arbitrator from its sub-list the arbitrator shall be selected by lot, upon request of the other Party, by the chair of the Trade Committee, or the chair's delegate, from the sub-list of that Party established under Article 15.23 (List of Arbitrators).

4. If the Parties do not agree on the chairperson of the arbitration panel within the time frame provided for in paragraph 2 the chair of the Trade Committee, or the chair's delegate, shall select by lot, upon request of a Party, the chairperson of the arbitration panel from the sub-list of chairpersons established under Article 15.23 (List of Arbitrators).

5. The chair of the Trade Committee, or the chair's delegate, shall select the arbitrators within five days of the request referred to in paragraphs3 or 4.

6. The date of establishment of the arbitration panel shall be the date on which the three selected arbitrators have notified the Parties of the acceptance of their appointment in accordance with Annex 15-A (Rules of Procedure).

7. If any of the lists provided for in Article 15.23 (List of Arbitrators) have not been established or do not contain sufficient names at the time a request is made pursuant to paragraphs 3 or 4, the arbitrators shall be drawn by lot from among the individuals who have been formally proposed by both Parties or by a Party in the event that only one Party has made a proposal.

ARTICLE 15.8

Dispute Settlement Proceedings of the Arbitration Panel

1. The rules and procedures set out in this Article, Annexes 15-A (Rules of Procedure) and 15-B (Code of Conduct for Arbitrators and Mediators) shall govern the dispute settlement proceedings of an arbitration panel.

2. Unless the Parties agree otherwise, they shall meet the arbitration panel within 10 days of its establishment in order to determine all matters that the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings and the remuneration and expenses of the arbitrators in accordance with Annex 15-A (Rules of Procedure). Arbitrators and representatives of the Parties may take part in this meeting via telephone or video conference.

3. The venue of the hearing shall be decided by mutual consent of the Parties. If the Parties do not agree on the venue of the hearing, it shall be held in Brussels if the complaining Party is Viet Nam and in Ha Noi if the complaining Party is the Union.

4. Any hearing shall be open to the public unless otherwise provided for in Annex 15-A (Rules of Procedure).

5. In accordance with Annex 15-A (Rules of Procedure), the Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. Any information or written submission submitted to the arbitration panel by a Party, including any comments on the descriptive part of the interim report, responses to questions by the arbitration panel and comments by a Party on those responses, shall be made available to the other Party.

6. Unless the Parties agree otherwise within three days of the date of establishment of the arbitration panel, the arbitration panel may receive, in accordance with Annex 15-A (Rules of Procedure), unsolicited written submissions (*amicus curiae* submissions) from natural or legal person established in the territory of a Party.

7. For its internal deliberations, the arbitration panel shall meet in closed session where only arbitrators take part. The arbitration panel may also permit its assistants to be present at its deliberations. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

ARTICLE 15.9

Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

ARTICLE 15.10

Interim Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale for any findings and recommendations, no later than 90 days from the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. The arbitration panel shall, under no circumstances, issue the interim report later than 120 days after the date of establishment of the arbitration panel.

2. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report within 14 days of its notification.

3. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to issue its interim report within 45 days and, in any case, no later than 60 days after the date of establishment of the arbitration panel. A Party may submit a written request, including comments, to the arbitration panel to review precise aspects of the interim report, within seven days of the notification of the interim report.

4. After considering any written requests, including comments, by the Parties on the interim report, the arbitration panel may modify its report and make any further examination that it considers appropriate.

ARTICLE 15.11

Final Report

1. The arbitration panel shall issue its final report to the Parties and to the Trade Committee within 120 days of the date of establishment of the arbitration panel. When it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its final report. The arbitration panel shall, under no circumstances, issue the final report later than 150 days from the date of establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable goods or seasonal goods or services, the arbitration panel shall make every effort to notify its final report within 60 days of the date of its establishment. The arbitration panel shall, under no circumstances issue the final report later than 75 days from the date of establishment of the arbitration panel.

3. The final report shall include a sufficient discussion of the arguments made at the interim review stage, and shall clearly address the comments of the Parties.

SUB-SECTION 2

COMPLIANCE

ARTICLE 15.12

Compliance with the Final Report

The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report.

ARTICLE 15.13

Reasonable Period of Time for Compliance

1. If immediate compliance is not possible, the Parties shall endeavour to mutually agree on the period of time to comply with the final report. In such a case, the Party complained against shall, no later than 30 days after the receipt of the final report, notify the complaining Party and the Trade Committee of the time it will require for compliance hereinafter referred to as the "reasonable period of time").

2. If there is disagreement between the Parties on the reasonable period of time to comply with the final report, the complaining Party shall, within 20 days of the receipt of the notification made in accordance with paragraph 1 by the Party complained against, request, in writing, the arbitration panel established pursuant to Article 15.7 (Establishment of the Arbitration Panel) (hereinafter referred to as the "original arbitration panel") to determine the length of the reasonable period of time. That request shall be notified to the Party complained against and copied to the Trade Committee.

3. The arbitration panel shall notify its ruling on the reasonable period of time to the Parties and to the Trade Committee within 20 days of the date of the submission of the request referred to in paragraph 2.

4. The Party complained against shall inform, in writing, the complaining Party of its progress to comply with the final report at least 30 days before the expiry of the reasonable period of time.

5. The Parties may agree to extend the reasonable period of time.

ARTICLE 15.14

Review of Measure Taken to Comply with the Final Report

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency of any measure taken to comply with the provisions referred to in Article 15.2 (Scope) and notified under paragraph 1, the complaining Party may request, in writing, the original arbitration panel to rule on the matter. The request shall be notified to the Party complained against and copied to the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and explain how such measure is inconsistent with the provisions referred to in Article 15.2 (Scope) in a manner sufficient to clearly present the legal basis for the complaint.

3. The arbitration panel shall notify its ruling to the Parties and to the Trade Committee within 45 days of the date of the submission of the request referred to in paragraph 2.

ARTICLE 15.15

Temporary Remedies in Case of Non-Compliance

1. If the Party complained against fails to notify the complaining Party and the Trade Committee of any measure taken to comply with the final report before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure to comply with has been taken or that the measure notified under paragraph 1 of Article 15.14 (Review of Measure Taken to Comply with the Final Report) is inconsistent with that Party's obligations under the provisions referred to in Article 15.2 (Scope), the Party complained against shall, if so requested by the complaining Party and after consultations with that Party, present an offer for compensation.

2. If the complaining Party decides not to request an offer for compensation or, in case such request is made, if no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 15.14 (Review of Measure Taken to Comply with the Final Report) that no measure to comply with has been taken or that a measure taken is inconsistent with the provisions referred to in Article 15.2 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 15.2 (Scope) at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of suspension of obligations. The complaining Party may implement the suspension at any moment after the expiry of 10 days from the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3 of this Article.

3. If the Party complained against considers that the level of suspension of obligations is not equivalent to the nullification or impairment caused by the violation, it may request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the complaining Party and copied to the Trade Committee before the expiry of the period of 10 days referred to in paragraph 2. The original arbitration panel shall notify its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has notified its ruling, and any suspension shall be consistent with that ruling.

4. The suspension of obligations and the compensation shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 15.19 (Mutually Agreed Solution);

(b) the Parties have agreed that the measure notified under paragraph 1 of Article 15.14 (Review of Measure Taken to Comply with the Final Report) brings the Party complained against into conformity with the provisions referred to in Article 15.2 (Scope); or

(c) any measure found to be inconsistent with the provisions referred to in Article 15.2 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 3 of Article 15.14 (Review of Measure Taken to Comply with the Final Report).

ARTICLE 15.16

Review of Measure Taken to Comply
After the Adoption of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the report of the arbitration panel following the suspension of obligations or following the application of compensation, as the case may be. With the exception of cases referred to in paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days of the date of the receipt of the notification. In the event that compensation has been applied, and with the exception of cases referred to in paragraph 2, the Party complained against may terminate the application of such compensation within 30 days from its notification that it has complied with the report of the arbitration panel.

2. If the Parties do not agree on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 15.2 (Scope), within 30 days of the date of receipt of the notification, the complaining Party shall request, in writing, the original arbitration panel to rule on the matter. That request shall be notified to the Party complained against, and copied to the Trade Committee.

3. The ruling of the arbitration panel shall be notified to the Parties and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that the notified measure is in conformity with the provisions referred to in Article 15.2 (Scope), the suspension of obligations or compensation, as the case may be, shall be terminated. Where relevant, the level of suspension of obligations or of compensation shall be adapted in light of the ruling of the arbitration panel.

SUB-SECTION 3

COMMON PROVISIONS

ARTICLE 15.17

Replacement of Arbitrators

If during arbitration proceedings the original arbitration panel, or some of its members, are unable to participate, withdraw or need to be replaced because the member does not comply with the requirements of the Code of Conduct in Annex 15-B (Code of Conduct for Arbitrators and Mediators), the procedure set out in Article 15.7 (Establishment of the Arbitration Panel) applies. The time limit for the notification of the reports and rulings, as the case may be, shall be extended by 20 days.

ARTICLE 15.18

Suspension and Termination of Arbitration Proceedings

1. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 consecutive months. It shall resume its work before the end of that suspension period at the written request of both Parties. The Parties shall inform the Trade Committee, accordingly. The arbitration panel may also resume its work at the end of the suspension period at the written request of either Party. The requesting Party shall inform the Trade Committee and the other Party, accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the suspension period, the authority of the arbitration panel shall lapse and the proceedings shall be terminated. In the event of a suspension of the work of the arbitration panel, the time-frames set out in the relevant provisions of this Chapter shall be extended by the same period of time for which the work was suspended. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings subject to Article 15.24 (Choice of Forum).

2. The Parties may agree to terminate the proceedings of the arbitration panel by jointly notifying such agreement to the chairperson of the arbitration panel and the Trade Committee at any time before the issuance of the final report of the arbitration panel.

ARTICLE 15.19

Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedure shall be suspended. If such approval is not required, or if the completion of any such domestic procedures is notified, the dispute settlement procedure shall be terminated.

ARTICLE 15.20

Information and Technical Advice

At the request of a Party, or upon its own initiative, the arbitration panel may request any information it deems appropriate for the proceedings of the arbitration panel from any source, including the Parties involved in the dispute. The arbitration panel has also the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained under this Article must be disclosed and submitted to the Parties for their comments within the time-frame set by the arbitration panel.

ARTICLE 15.21

Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 15.2 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties*, concluded at Vienna on 23 May 1969. The arbitration panel shall also take into account relevant interpretations in reports of panels and of the Appellate Body adopted by the WTO Dispute Settlement Body. The reports and rulings of the arbitration panel shall not add to or diminish the rights and obligations of the Parties provided for in this Agreement.

ARTICLE 15.22

Decisions and Rulings of the Arbitration Panel

1. The arbitration panel shall make every effort to take any decision by consensus. In the event that a decision cannot be reached by consensus, the matter at issue shall be decided by majority vote. Dissenting opinions of arbitrators shall in no case be disclosed.

2. The reports and rulings of the arbitration panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons. The reports and rulings shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 15.2 (Scope) and the basic rationale behind any findings and conclusions. The Trade Committee shall make the reports and rulings of the arbitration panel publicly available in their entirety within 10 days of their issuance, unless it decides not to do so in order to protect confidential information.

SECTION D

GENERAL PROVISIONS

ARTICLE 15.23

List of Arbitrators

1. The Trade Committee shall, no later than six months after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists:

(a) one sub-list for the Union;

(b) one sub-list for Viet Nam; and

(c) one sub-list of individuals who are not nationals of either Party and do not have permanent residence in either Party and who shall act as chairperson of the arbitration panel.

2 Each sub-list shall include at least five individuals. The Trade Committee shall ensure that the list is always maintained at this minimum number of individuals.

3. Arbitrators shall have demonstrated expertise and experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct in Annex 15-B (Code of Conduct for Arbitrators and Mediators).

4. The Trade Committee may establish an additional list of 10 individuals with demonstrated expertise and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such an additional list shall be used to compose the arbitration panel in accordance with the procedure set out in Article 15.7 (Establishment of the Arbitration Panel).

ARTICLE 15.24

Choice of Forum

1. Recourse to the dispute settlement procedure under this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action, or under any other international agreement to which both Parties are party.

2. By way of derogation from paragraph 1, a Party shall not, for a particular measure, seek redress for the breach of a substantially equivalent obligation under this Agreement and under the WTO Agreement or under any other international agreement to which both Parties are party in the relevant fora. Once dispute settlement proceedings have been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected first fails for procedural or jurisdictional reasons to make findings on the claim seeking redress to that obligation.

3. For the purposes of this Article:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes;

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 15.5 (Initiation of the Arbitration Procedure);

(c) dispute settlement proceedings under any other international agreement are deemed to be initiated in accordance with that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations in accordance with this Chapter.

ARTICLE 15.25

Time Limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to notify their reports and rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Chapter may be modified by mutual agreement of the Parties to the dispute. The arbitration panel may at any time propose to the Parties to modify any time limit referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 15.26

Review and Modification

The Trade Committee may decide to review and modify Annexes 15-A (Rules of Procedure), 15-B (Code of Conduct for Arbitrators and Mediators) and 15-C (Mediation Mechanism).

CHAPTER 16

COOPERATION AND CAPACITY BUILDING

ARTICLE 16.1

Objectives and Scope

1. The Parties affirm the importance of cooperation and capacity building for the efficient implementation of this Agreement, which supports the continued expansion of and creates new opportunities for trade and investment between them.

2. The Parties commit to deepen cooperation in areas of mutual interest taking into consideration the different levels of development between the Union and Viet Nam. That cooperation shall foster sustainable development in all its dimensions, including sustainable growth and the reduction of poverty.

3. This Chapter applies to all provisions on cooperation of this Agreement.

ARTICLE 16.2

Areas and Means of Cooperation

1. The Parties acknowledge that cooperation shall be carried out within the existing legal and institutional framework and according to the rules and procedures governing the relations between the Parties.

2. To achieve the objectives referred to in Article 16.1 (Objectives and Scope), the Parties attach particular importance to cooperating in the following areas:

(a) regional cooperation and integration;

(b) trade facilitation;

(c) trade policy and regulations;

(d) trade-related aspects of agriculture, fishery and forestry;

(e) sustainable development, in particular in its environmental and labour dimensions;

(f) small and medium-sized enterprises;

(g) other areas identified under specific Chapters of this Agreement; and

(h) other areas of mutual interest related to this Agreement.

3. Cooperation between the Parties shall primarily be carried out by means of exchange of information, experience and best practices as well as by means of policy cooperation. Where appropriate, seminars, workshops, training, studies, technical assistance and capacity building may be considered.

4. The Parties acknowledge the potentially important role of the private sector in cooperation and shall support its involvement in order to contribute to maximising the Agreement's benefit for economic growth and development.

ARTICLE 16.3

Animal Welfare

The Parties agree to cooperate on animal welfare as necessary, including technical assistance and capacity building for the development of animal welfare standards. For the purpose of this Article they shall consult the Committee on Sanitary and Phytosanitary Measures established pursuant to Article 17.2 (Specialised Committees).

ARTICLE 16.4

Institutional Mechanism

1. Cooperation issues shall be discussed in the relevant specialised committees established pursuant to Article 17.2 (Specialised Committees). In areas of cooperation outside the remit of the specialised committees, those issues shall be discussed within the Trade Committee.

2. Each Party shall designate a contact point within its administration to liaise with the other Party on matters related to the implementation of this Chapter.

CHAPTER 17

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

ARTICLE 17.1

Trade Committee

1. The Parties hereby establish a Trade Committee comprising representatives of the Parties.

2. The Trade Committee shall meet once a year, unless otherwise decided by the Trade Committee, or in urgent cases at the request of a Party. The meetings of the Trade Committee shall take place alternately in the Union and Viet Nam, unless otherwise agreed by the Parties. The Trade Committee shall be co-chaired by the Minister of Industry and Trade of Viet Nam and the Member of the European Commission responsible for Trade, or their respective delegates. The Trade Committee shall agree on its meeting schedule and set its agenda.

3. The Trade Committee shall:

(a) ensure the proper operation of this Agreement;

(b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;

(c) supervise and coordinate the work of all specialised committees, working groups and other bodies established under this Agreement, recommend to those bodies any necessary action, and evaluate and adopt decisions, where provided for in this Agreement, regarding any subject matter referred to it by those bodies;

(d) consider ways to further enhance trade and investment relations between the Parties;

(e) without prejudice to Chapter 15 (Dispute Settlement), seek to solve problems which might arise in areas covered by this Agreement, or resolve disputes that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter of interest relating to areas covered by this Agreement.

4. The Trade Committee may, in accordance with the relevant provisions of this Agreement:

(a) decide to establish specialised committees, working groups or other bodies, to allocate responsibilities to them in order to assist it in the performance of its tasks, and to dissolve them. The Trade Committee shall determine the composition, remit and tasks of the specialised committees, working groups or other bodies it establishes;

(b) communicate on issues falling under the scope of this Agreement with all interested parties, including the private sector, social partners, and civil society organisations;

(c) consider and recommend to the Parties amendments to this Agreement or, in cases specifically provided for in this Agreement, amend, by decision, provisions of this Agreement;

(d) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all bodies set up under this Agreement, including arbitration panels referred to under Chapter 15 (Dispute Settlement);

(e) adopt decisions or make recommendations as envisaged by this Agreement;

(f) adopt its own rules of procedure; and

(g) take any other action in the exercise of its functions in accordance with this Agreement.

5. The Trade Committee shall inform the Joint Committee set up under the Partnership and Cooperation Agreement as part of the common institutional framework on its activities and those of its specialised committees, as relevant, at the regular meetings of the Joint Committee.

ARTICLE 17.2

Specialised Committees

1. The following specialised committees are hereby established under the auspices of the Trade Committee:

(a) the Committee on Trade in Goods;

(b) the Committee on Customs;

(c) the Committee on Sanitary and Phytosanitary Measures;

(d) the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement; and

(e) the Committee on Trade and Sustainable Development.

2. The composition, remit and tasks of the specialised committees referred to in paragraph 1 are defined in the relevant chapters and protocols of this Agreement and can be modified, if necessary, by decision of the Trade Committee.

3. Unless otherwise provided for in this Agreement or agreed by the Parties, the specialised committees shall meet once a year. They shall also meet at the request of either Party or of the Trade Committee. They shall be co-chaired, at an appropriate level, by representatives of the Union and Viet Nam. The meetings shall take place alternately in the Union and Viet Nam, or by any other appropriate means of communication as agreed between the Parties. The specialised committees shall agree on their meeting schedule and set their agenda by mutual consent. Each specialised committee may decide its own rules of procedure in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

4. The specialised committees may submit proposals for decisions to be adopted by the Trade Committee or take decisions when this Agreement so provides.

5. At the request of a Party, or upon a reference from the relevant specialised committee, or when preparing a discussion in the Trade Committee, the Committee on Trade in Goods may address matters arising in the areas of customs and sanitary and phytosanitary measures if this could facilitate the resolution of a matter that cannot otherwise be resolved by the relevant specialised committee.

6. The specialised committees shall inform the Trade Committee of their schedules and agenda sufficiently in advance of their meetings and shall report to the Trade Committee on results and conclusions of their meetings. The existence of a specialised committee shall not prevent either Party from bringing any matter directly to the Trade Committee.

ARTICLE 17.3

Working Groups

1. The following working groups are hereby established under the auspices of the Committee on Trade in Goods:

(a) the Working Group on Intellectual Property Rights, including Geographical Indications; and

(b) the Working Group on Motor Vehicles and Parts.

2. The Trade Committee may decide to establish other working groups for a specific task or subject matter.

3. The Trade Committee shall determine the composition, remit and tasks of the working groups.

4. Unless otherwise agreed by the Parties, working groups shall meet once a year. They shall also meet at the request of either Party or of the Trade Committee. They shall be co-chaired, at appropriate level, by representatives of the Union and Viet Nam. The meetings shall take place alternately in the Union or Viet Nam, or by any other appropriate means of communication as agreed between the Parties. The working groups shall agree on their meeting schedule and set their agenda by mutual consent. They may agree their own rules of procedure in the absence of which the rules of procedure of the Trade Committee shall apply *mutatis mutandis*.

5. Working groups shall inform the relevant specialised committees of their schedules and agenda sufficiently in advance of their meetings. They shall report on their activities at each regular meeting of the relevant specialised committees. The existence of a working group shall not prevent either Party from bringing any matter directly to the Trade Committee or the relevant specialised committees.

ARTICLE 17.4

Decision Making of the Trade Committee

1. The Trade Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions, where provided for in this Agreement. The decisions taken shall be binding on the Parties, which shall take the measures necessary for the implementation of these decisions.

2. The Trade Committee may make appropriate recommendations to the Parties.

3. All decisions and recommendations of the Trade Committee shall be made by mutual consent.

ARTICLE 17.5

Amendments

1. The Parties may amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal procedures as provided for in Article 17.16 (Entry into Force).

2. Notwithstanding paragraph 1, the Trade Committee may amend this Agreement as provided for in this Agreement. The Parties shall adopt the decision in the Trade Committee in accordance with their respective applicable legal procedures.

3. Notwithstanding paragraph 1, the list of entities in Sections A (Central Government Entities) to C (Other Covered Entities) of Annexes 9A (Coverage of Government Procurement for the Union) and 9B (Coverage of Government Procurement for Viet Nam) may be modified in accordance with Articles 9.20 (Modification and Rectification to Coverage) and 9.23 (Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement).

ARTICLE 17.6

Evolving WTO Law

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with each other with a view to finding a mutually satisfactory solution, where necessary. As a result of such a review, the Trade Committee may take a decision to amend this Agreement accordingly.

ARTICLE 17.7

Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either the Union or one of its Member States or Viet Nam under any tax agreement between any Member State of the Union and Viet Nam. In the event of any inconsistency between this Agreement and any tax agreement, that tax agreement shall prevail to the extent of the inconsistency.

2. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, 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.

3. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

ARTICLE 17.8

Current Account

The Parties shall authorise, in freely convertible currency, and in accordance with the provisions of *Articles of the Agreement of the International Monetary Fund*, as applicable, any payments and transfers with regard to transactions on the current account of the balance-of-payments between the Parties which fall within the scope of this Agreement, in particular relating to their respective specific commitments under Sub-Section 6 (Financial Services) of Section E (Regulatory Framework) of Chapter 8 (Liberalisation of Investment, Trade in Services and Electronic Commerce).

ARTICLE 17.9

Capital Movements

1. With regard to transactions on the capital and financial account of balance-of-payments, the Parties shall not impose any restrictions on the free movement of capital relating to investments liberalised in accordance with Section B (Liberalisation of Investment) of Chapter 8 (Liberalisation of Investment, Trade in Services and Electronic Commerce).

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

ARTICLE 17.10

Application of Laws and Regulations relating
to Capital Movements, Payments or Transfers

Articles 17.8 (Current Account) and 17.9 (Capital Movements) shall not be construed to prevent a Party from applying in an equitable and non-discriminatory manner, and in a way that would not constitute a disguised restriction on trade and investment, its laws and regulations relating to:

(a) bankruptcy, insolvency, bank recovery and resolution, the protection of the rights of creditors, or the prudential supervision of financial institutions;

(b) issuing, trading, or dealing in financial instruments;

(c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring the satisfaction of judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

ARTICLE 17.11

Temporary Safeguard Measures with Regard to Capital Movements, Payments or Transfers

In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or, in the case of Viet Nam, for the operation of the monetary and exchange rate policy, or a threat thereof, the Party concerned may take safeguard measures that are strictly necessary with regard to capital movements, payments or transfers for a period not exceeding one year.

ARTICLE 17.12

Restrictions in Case of Balance-of-Payments or External Financial Difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or a threat thereof, it may adopt or maintain safeguard measures with regard to capital movements, payments or transfers, which shall:

(a) be non-discriminatory compared to third countries in like situations;

(b) not go beyond what is necessary to remedy the balance-of-payments or external financial difficulties;

(c) be consistent with the *Articles of Agreement of the International Monetary Fund* as applicable;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be temporary and phased out progressively as the situation improves.

2. 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 restrictive measures shall be in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*.

3. In the case of trade in services or the liberalisation of investments, each Party may adopt restrictive measures in order to safeguard its external financial position or its balance-of-payments. Those restrictive measures shall respect the conditions mentioned in Article XII of GATS.

4. A Party maintaining or having adopted the measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

5. Where restrictions are adopted or maintained under this Article, consultations shall be held promptly in the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement 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, *inter alia*, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 to 3. All relevant findings of statistical or factual nature presented by the IMF shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

ARTICLE 17.13

Security Exceptions

Nothing in this Agreement shall be construed as:

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

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

(i) connected with the production of or trade in arms, munitions and war materials and relating to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

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

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

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

or

(c) preventing a Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the purpose of maintaining international peace and security.

ARTICLE 17.14

Preference Utilisation

After one year from the date of entry into force of this Agreement, the Parties shall exchange by 1 July each year annual import statistics for the previous year, including figures at tariff line level, on preferential and on non-preferential trade in goods between them.

ARTICLE 17.15

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 confidential information in dispute settlement proceedings under Chapter 15 (Dispute Settlement). In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits to the Trade Committee or to specialised committees information 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.

ARTICLE 17.16

Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their respective applicable legal procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other of the completion of their applicable legal procedures for the entry into force of this Agreement. The Parties may agree on another date.

3. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Industry and Trade of Viet Nam.

ARTICLE 17.17

Duration

1. This Agreement shall be valid indefinitely.

2. Either Party may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect at the end of the sixth month after the notification.

ARTICLE 17.18

Fulfilment of Obligations

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained.

2. If a Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement.

ARTICLE 17.19

Persons Exercising Delegated Government Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person, including a state-owned enterprise, 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 as provided for in its domestic legislation, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of its authority.

ARTICLE 17.20

No Direct Effect

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. Viet Nam may provide otherwise under its domestic law.

ARTICLE 17.21

Annexes, Appendices, Joint Declarations, Protocols and Understanding

The Annexes, Appendices, Joint Declarations, Protocols, and Understandings to this Agreement shall form an integral part thereof.

ARTICLE 17.22

Relations to other Agreements

1. Unless otherwise provided for in this Agreement, previous agreements between the Member States of the Union or the European Community or the Union and Viet Nam are not superseded or terminated by this Agreement.

2. This Agreement shall be part of the overall relations between the Union and its Member States, on one side, and Viet Nam, on the other side, as provided for in the Partnership and Cooperation Agreement and shall form part of the common institutional framework.

3. Nothing in this Agreement shall be construed as requiring a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

ARTICLE 17.23

Future Accessions to the Union

1. The Union shall notify Viet Nam of any request for accession of a third country to the Union.

2. During the negotiations between the Union and a candidate country seeking accession, the Union shall endeavour to:

(a) provide, upon request of Viet Nam, and to the extent possible, information regarding any matter covered by this Agreement; and

(b) take into account concerns expressed by Viet Nam.

3. The Union shall notify Viet Nam of the entry into force of any accession to the Union.

4. The Trade Committee shall examine, sufficiently in advance of the date of accession of a third country to the Union, any effects which that accession may have on this Agreement. The Parties may, by decision of the Trade Committee, put in place any necessary adjustments or transitional arrangements.

ARTICLE 17.24

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 *Treaty on the Functioning of the European Union* are applied and under the conditions laid down in those Treaties; and

(b) with respect to Viet Nam, to its territory.

References to "territory" in this Agreement shall be understood in this sense, except as otherwise expressly provided for.

2. As regards the provisions concerning the tariff treatment of goods, this Agreement shall also apply to those areas of the Union customs territory not covered by subparagraph 1(a).

ARTICLE 17.25

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Vietnamese languages, each of these texts being equally authentic.

Done at [……] on [……]

For the European Union

For the Socialist Republic of Viet Nam