AGREEMENT BETWEEN THE KINGDOM OF THAILAND AND JAPAN
FOR AN ECONOMIC PARTNERSHIP

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Preamble

The Kingdom of Thailand and Japan (hereinafter referred to in this Agreement as "the Parties"),

Conscious of their warm relations and strong economic and political ties, including shared perceptions on various issues, that have developed through many years of fruitful and mutually beneficial cooperation;

Recognising that the economic partnership of the Parties would create larger and new markets, and would improve their economic efficiency and consumer welfare, enhancing the attractiveness and vibrancy of their markets, and expanding trade and investment not only between them but also in the region;

Bearing in mind their rights and obligations under other international agreements to which they are parties, in particular those of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994;

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, respectively in Annex 1A and Annex 1B to the above-mentioned Agreement;

Desirous to jointly develop and strengthen cooperation with nations in Southeast Asia for prosperity and well-being of the people thereof;

Recognising the need to develop and enhance cooperation between people and business communities of the Parties for mutual benefits;

Bearing in mind each Party's specific needs and differences in the level of development as well as the common goal of early achievement of progressively higher levels of liberalisation;

Bearing in mind the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations, signed in Bali, Indonesia on 8 October 2003;

Convinced that stronger economic linkages between the Parties would provide greater opportunities, larger economies of scale and a more predictable environment for economic activities not only for Japanese and Thai businesses but also for other businesses in Asia; and

Determined to create a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

Chapter 1
General Provisions

Article 1
Objectives

The objectives of this Agreement are to:

(a) liberalise and facilitate trade in goods and services between the Parties;

(b) realise and promote paperless trading between the Parties;

(c) facilitate the mutual recognition of the results of conformity assessment procedures for products or processes;

(d) encourage and promote investment and ensure protection for investments and investment activities in the Parties;

(e) facilitate the movement of natural persons;

(f) ensure and enhance adequate, effective and non-discriminatory protection of intellectual property to promote trade and investment between the Parties;

(g) enhance cooperation for mutual benefit of the Parties in the field of government procurement;

(h) promote fair and free competition by proscribing anti-competitive activities and cooperate in the field thereof;

(i) establish a framework for further bilateral cooperation; and

(j) promote transparency in the implementation of laws and regulations respecting matters covered by this Agreement.

Article 2
General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994, as may be amended;

(b) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994, as may be amended and references to articles in GATT 1994 include the interpretative notes;

(c) the term "Harmonized System (HS)" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended, and adopted and implemented by the Parties in their respective domestic laws; and

(d) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994, as may be amended.

Article 3
Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as, to the extent possible, international agreements to which the Party is a party, which affect the implementation and operation of this Agreement.

2. Each Party shall make publicly available the names and addresses of competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1 above.

3. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.

4. When introducing or changing its laws, regulations or administrative procedures that significantly affect the implementation and operation of this Agreement, each Party shall endeavour to provide, to the extent practicable and except in emergency situations, a reasonable interval between the time when such laws, regulations or administrative procedures are published or made publicly available and the time when they enter into force.

Article 4
Public Comment Procedures

The Government of each Party shall, in accordance with the laws and regulations of the Party, endeavour to provide, except in cases of emergency or of insignificant nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulations of general application that affect any matter covered by this Agreement.

Article 5
Administrative Proceedings

Where the competent authorities of a Party adopt measures which pertain to or affect the implementation and operation of this Agreement and which impose obligations on or restrict rights of a person, such competent authorities shall, prior to any final decision, when time, the nature of the measures and public interest permit and in accordance with the laws and regulations of the Party, provide that person with:

(a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of the position of such person.

Article 6
Review and Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding 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.

3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that the decisions referred to in subparagraph 2(b) above are implemented by the competent authorities of the Party with respect to the administrative action at issue.

Article 7
Measures against Corruption

Each Party shall ensure that measures and efforts are undertaken to prevent and combat corruption of its public officials regarding matters covered by this Agreement in accordance with its laws and regulations.

Article 8
Confidential Information

1. Unless otherwise provided for in this Agreement, nothing in this Agreement shall be construed to require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

2. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

Article 9
Taxation

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 3 and 8 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 10
General and Security Exceptions

1. For the purposes of Chapters 2, 3, 4 and 8 other than Article 103, Articles XX and XXI of the GATT 1994 shall apply *mutatis mutandis*.

2. For the purposes of Chapters 7, 8 other than Article 103 and, 9, Articles XIV and XIV *bis* of the GATS shall apply *mutatis mutandis*.

Article 11
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

Article 12
Implementing Agreement

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as "the Implementing Agreement").

Article 13
Joint Committee

1. A Joint Committee composed of representatives of the Governments of the Parties shall be established under this Agreement.

2. The functions of the Joint Committee shall be:

(a) reviewing the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting;

(i) the Operational Procedures referred to in Article 24; and

(ii) any necessary decisions; and

(e) carrying out other functions as may be agreed upon.

3. The Joint Committee:

(a) shall be co-chaired by an official of the Government of Japan, at the level of deputy minister or higher, and an official of the Government of the Kingdom of Thailand, at the level of deputy permanent secretary or higher, unless the Parties agree that the Joint Committee convene at ministerial level;

(b) may establish Sub-Committees and delegate its responsibilities thereto; and

(c) may take such other action in the exercise of its functions as the Parties may agree.

4. The Joint Committee shall convene alternately in Japan and the Kingdom of Thailand (hereinafter referred to in this Agreement as "Thailand"), unless the Parties agree otherwise.

Article 14
Communications

Communications between the Parties on any matter relating to this Agreement shall be facilitated through the following contact points:

(a) in the case of Japan, the Ministry of Foreign Affairs; and

(b) in the case of Thailand, the Ministry of Foreign Affairs.

Chapter 2
Trade in Goods

Article 15
Definitions

For the purposes of this Chapter:

(a) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 1 of Article 22;

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

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

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

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

(c) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

(d) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(e) the term "originating goods" means goods which qualify as originating goods under the provisions of Chapter 3;

(f) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in subparagraph 7(a) of Article 22;

(g) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and

(h) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

Article 16
Classification of Goods

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

Article 17
National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994.

Article 18
Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1 in accordance with the terms and conditions set out in such Schedule.

2. Upon request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

Article 19
Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, the provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as "the Agreement on Customs Valuation"), shall apply *mutatis mutandis*.

Article 20
Export Subsidy on Agricultural Goods

Subject to the Agreement on Agriculture in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Agriculture"), neither Party shall introduce or maintain any export subsidy on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

Article 21
Non-tariff Measures

1. Except as otherwise provided for in this Agreement, each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 above and shall ensure the full compliance with its obligations under the WTO Agreement.

Article 22
Bilateral Safeguard Measures

1. If an originating good of a Party, as a result of the elimination or reduction of a customs duty in accordance with Article 18, is being imported into the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of the originating good constitute a cause of serious injury, or threat thereof, to a domestic industry of the other Party, the other Party may, as a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to the domestic industry of the other Party and to facilitate its adjustment:

(a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or

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

(i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is taken; and

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

2. (a) A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Safeguards"), and to this end, Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*.

(b) The investigation referred to in subparagraph (a) above shall, except in special circumstances, be completed within 1 year, and in no case more than 18 months, following its date of initiation.

3. The following conditions and limitations shall apply to a bilateral safeguard measure:

(a) A Party shall immediately deliver a written notice to the other Party upon:

(i) initiating an investigation referred to in subparagraph 2(a) above relating to serious injury or threat thereof and the reasons for it;

(ii) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party; and

(iii) taking a decision to apply or extend a bilateral safeguard measure.

(b) Subject to the provisions of Article 8, the Party making the written notice referred to in subparagraph (a) above shall provide the other Party with all relevant information, which shall include:

(i) in the written notice referred to in subparagraph (a)(i) above, the reasons for the initiation of the investigation, a precise description of the originating good of the other Party subject to the investigation and its tariff classification under the Harmonized System and the date of initiation of the investigation; and

(ii) in the written notice referred to in subparagraphs (a)(ii) and (iii) above, evidence of serious injury or threat thereof caused by the increased imports of an originating good of the other Party, a precise description of the originating good of the other Party subject to the proposed bilateral safeguard measure and its tariff classification under the Harmonized System, a precise description of the proposed bilateral safeguard measure, the proposed date of its introduction and its expected duration.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 2(a) above and exchanging views on the bilateral safeguard measure.

(d) No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed 3 years. A bilateral safeguard measure may be extended by up to 2 years, provided that the conditions of this Article are met. The total period of a bilateral safeguard measure, including any extensions thereof, shall not exceed 5 years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over 1 year, the Party applying the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

(e) No bilateral safeguard measure shall be applied again to the import of a particular originating good of the other Party which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or 1 year, whichever is longer.

(f) Upon the termination of a bilateral safeguard measure on an originating good of the other Party, the rate of customs duty for such originating good of the other Party shall be the rate which would have been in effect as if the bilateral safeguard measure had never been applied.

4. (a) A Party applying or extending a bilateral safeguard measure shall provide to the other Party an adequate opportunity to consult on adequate means of trade compensation in the form of concessions which are substantially equivalent to the bilateral safeguard measure without delay and no later than 30 days after such application or extension.

(b) If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to subparagraph (a) above, the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions under this Agreement, which are substantially equivalent to the bilateral safeguard measure. That Party may suspend the application of concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is applied.

(c) The Party exercising the right of suspension provided for in subparagraph (b) above shall deliver a written notice to the other Party at least 30 days before suspending the application of concession.

(d) The right of suspension provided for in subparagraph (b) above shall not be exercised for the first 2 years that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article.

5. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to the bilateral safeguard measure.

6. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measure.

7. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 1(a) or (b) above, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 18 have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is taken.

(c) The duration of the provisional bilateral safeguard measure shall not exceed 200 days. During that period, the relevant requirements of paragraph 2 above shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 3(d) above.

(d) Subparagraph 3(f) and paragraphs 5 and 6 above shall apply *mutatis mutandis* to the provisional bilateral safeguard measure. Any additional customs duties collected as a result of the provisional bilateral safeguard measure shall be promptly refunded if the subsequent investigation referred to in subparagraph 2(a) above does not determine that increased imports of the originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

8. Written notice referred to in subparagraphs 3(a), 4(c) and 7(b) above shall be done in the English language.

9. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Agreement on Safeguards and Article 5 of the Agreement on Agriculture.

10. The Parties shall review the provisions of this Article, if necessary, after 15 years of the date of entry into force of this Agreement.

Article 23
Restrictions to Safeguard the Balance of Payments

1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 24
Operational Procedures

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities defined in Article 27 and relevant authorities of the Parties shall implement their functions under this Chapter and Chapter 3.

Article 25
Sub-Committee on Trade in Goods

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) reporting the findings of the Sub-Committee to the Joint Committee; and

(c) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed.

Article 26
Review

The Parties shall undertake a general review of the provisions of this Chapter, including a general review of the Schedules in Annex 1 including the originating goods that are excluded from any commitment of elimination or reduction of customs duties and commitment of negotiation, in the tenth calendar year following the calendar year in which this Agreement enters into force, or earlier only if agreed between the Parties. As a result of such review, the Parties may, only if the Parties agree, enter into negotiation on possible elimination or reduction of customs duties on originating goods on which the Parties agree, during such review, to negotiate.

Chapter 3
Rules of Origin

Article 27
Definitions

For the purposes of this Chapter:

(a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry or an authority succeeding this Ministry, and in the case of Thailand, the Ministry of Commerce or an authority succeeding this Ministry;

(b) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of its customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Thailand, the Customs Department;

(c) the term "exporter" means a person located in an exporting Party who exports a good from the exporting Party;

(d) the terms "factory ships of the Party" and "vessels of the Party" respectively mean factory ships and vessels:

(i) which are registered in the Party;

(ii) which sail under the flag of the Party;

(iii) which are owned to an extent of at least 50 per cent by nationals of the Party, or by a juridical person with its head office in the Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Party, and of which at least 50 per cent of the equity interest is owned by nationals or juridical persons of the Party; and

(iv) of which at least 75 per cent of the total of the master, officers and crew are nationals of the Parties or non-Parties which are member countries of the Association of Southeast Asian Nations (hereinafter referred to in this Agreement as "ASEAN");

(e) the term "fungible goods" or "fungible materials" respectively means goods or materials that are interchangeable for commercial purposes, whose properties are essentially identical;

(f) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(g) the term "importer" means a person who imports a good into the importing Party in accordance with its laws and regulations;

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

(i) fuel and energy;

(ii) tools, dies and molds;

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

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

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

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

(vii) catalysts and solvents; and

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

(i) the term "material" means a good that is used in the production of another good;

(j) the term "non-originating material" means a good which is used in the production of another good and does not qualify as an originating material of a Party referred to in paragraph (k) below;

(k) the term "originating material of a Party" means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to Article 29;

(l) the term "packing materials and containers for shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 37;

(m) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 18; and

(n) the term "production" means methods of obtaining goods including but not limited to manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 28
Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

(a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2 below;

(b) the good is produced entirely in the Party exclusively from originating materials of the Party; or

(c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials in whole or in part.

2. For the purposes of subparagraph 1(a) above, the following goods shall be considered as being wholly obtained or produced entirely in a Party:

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

(b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;

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

(d) plants and plant products harvested, picked or gathered in the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d) above, extracted or taken in the Party;

(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial seas of the Parties;

(g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f) above;

(h) goods taken from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil;

(i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;

(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;

(k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and

(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k) above.

3. For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.

4. (a) For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b) below, is not less than the percentage specified by the rule for the good.

(b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 5 below, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) above shall be the value:

(a) adjusted to the first ascertainable price paid for the good from the buyer to the producer of the good, if there is free-on-board value of a good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of the good.

6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above, the value of a non-originating material used in the production of the good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above in determining whether the good qualifies as an originating good of a Party, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a) above, in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

Article 29
Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party.

Article 30
De Minimis

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

Article 31
Non-qualifying Operations

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 merely by having undergone following operations:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f) above.

Article 32
Consignment Criteria

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:

(a) transported directly from the other Party; or

(b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading or any other operation to preserve it in good condition.

2. If the originating good of the other Party does not meet the consignment criteria referred to in paragraph 1 above, that good shall not be considered as the originating good of the other Party.

Article 33
Unassembled or Disassembled Goods

Where a good satisfies the requirements of the relevant provisions of Articles 28 through 31 and is imported into a Party from the other Party in a disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

Article 34
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible materials consisting of originating materials of a Party and non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

2. Where fungible goods consisting of originating goods of a Party and non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

Article 35
Indirect Materials

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where a good is produced.

Article 36
Accessories, Spare Parts and Tools

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 37
Packaging Materials and Containers for Retail Sale

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If the good is subject to a qualifying value content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 38
Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be disregarded:

(a) in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and

(b) in calculating the qualifying value content of the good.

Article 39
Claim for Preferential Tariff Treatment

1. The importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1 above, the importing Party shall not require a certificate of origin from importers for:

(a) an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed 200 United States dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish; or

(b) an importation of an originating good of the exporting Party, for which the importing Party has waived the requirement for a certificate of origin.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

(a) a copy of through bill of lading; or

(b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that it has not undergone operations other than unloading, reloading or any other operation to preserve it in good condition in those non-Parties.

Article 40
Certificate of Origin

1. The certificate of origin referred to in paragraph 1 of Article 39 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorised agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of the certificate of origin, under the authorisation given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of the certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish each Party's format of the certificate of origin in English in the Operational Procedures referred to in Article 24.

5. The certificate of origin shall be completed in English.

6. The issued certificate of origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.

7. Where the exporter is not the producer of a good, the exporter may request a certificate of origin on the basis of:

(a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or

(b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.

8. The certificate of origin shall be issued only after the exporter who requests a certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b) above, proves to the competent governmental authority or its designees that the good to be exported qualifies as an originating good of the exporting Party.

9. The competent governmental authority of the exporting Party shall provide the other Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority of the exporting Party or its designees.

10. Each Party shall ensure that the competent governmental authority or its designees shall keep a record of the certificates of origin issued for a period of 5 years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

Article 41
Response to Inquiries

The customs authority of the importing Party shall endeavour to, prior to the importation of a good, provide a response to inquiries in accordance with its laws and regulations as to whether the good to be imported qualifies as an originating good of the exporting Party to importers of the good of the exporting Party or their authorised agents, where a written application is made with all the necessary information.

Article 42
Obligations Regarding Exportations

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 40:

(a) shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when he knows that such good does not qualify as an originating good of the exporting Party; and

(b) shall keep the records relating to the origin of a good for 5 years after the date on which the certificate of origin was issued.

Article 43
Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the other Party under preferential tariff treatment qualifies as an originating good of the other Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of a certificate of origin.

2. For the purposes of paragraph 1 above, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested within a period of 3 months from the date of receipt of the request.

If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested within a period of 2 months from the date of receipt of the request.

3. For the purposes of paragraph 2 above, the competent governmental authority of the exporting Party may request the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 40 to provide the former with the information requested.

4. The requesting of the information in accordance with paragraph 1 above shall not preclude the use of a verification method provided for in Article 44.

Article 44
Verification Visit

1. The customs authority of the importing Party may request the exporting Party to:

(a) collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by its competent governmental authority along with the customs authority of the importing Party to the premises of the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 40; and

(b) provide information relating to the origin of the good in the possession of the competent governmental authority or its designee during the visit pursuant to subparagraph (a) above.

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1 above, the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the latter Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.

3. The communication referred to in paragraph 2 above shall include:

(a) the identity of the customs authority issuing the communication;

(b) the name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited;

(c) the proposed date and place of the visit;

(d) the object and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and

(e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2 above, if it accepts or refuses to conduct a visit requested pursuant to paragraph 1 above.

5. The competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1 above.

Article 45
Determination of Origin and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party except where the certificate has been returned to the competent governmental authority. The customs authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment where it receives the notification.

3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:

(a) where the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 5 of Article 44;

(b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 2 of Article 44 within the period referred to in paragraph 4 of Article 44; or

(c) where the information provided to the customs authority of the importing Party pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 44.

Article 46
Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the customs authority of the importing Party pursuant to this Chapter:

(a) may only be used by such authority for the purposes of this Chapter; and

(b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

Article 47
Penalties and Measures against False Declaration

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and its producers of the goods in the exporting Party referred to in subparagraph 7(b) of Article 40, for providing false declaration or documents to its competent governmental authority or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and its producers of the goods in the exporting Party referred to in subparagraph 7(b) of Article 40, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

Article 48
Miscellaneous Provisions

For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

Article 49
Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing and making appropriate recommendations, as needed, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annexes 2 and 3, proposed by either Party; and

(iii) the Operational Procedures referred to in Article 24;

(b) considering any other matter as the Parties may agree related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed.

4. The Sub-Committee shall meet at such venues and times as may be agreed upon.

Chapter 4
Customs Procedures

Article 50
Scope and Coverage

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

2. This Chapter shall be implemented by the Parties in accordance with their respective laws and regulations and within the available resources of their respective customs authorities.

Article 51
Definitions

For the purposes of this Chapter:

(a) the term "customs authority" means the customs authority as defined in subparagraph (b) of Article 27; and

(b) the term "customs laws" means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authority of each Party, and any regulations made by the customs authority of each Party under their statutory powers.

Article 52
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person.

2. When information that has been made available must be amended due to changes in its customs laws, each Party shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. At the request of the interested person, each Party shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

Article 53
Customs Clearance

1. Both Parties shall make cooperative efforts for simplification and harmonisation of their customs procedures by observing the following principles:

(a) the application of customs procedures in a predictable, consistent and transparent manner;

(b) cooperation wherever appropriate with other national authorities, customs authorities of non-Parties and the trading communities, with a view to contributing to realising paperless trading and for other purposes; and

(c) the provision to affected parties of easily accessible processes of administrative and judicial review.

2. For the purposes of paragraph 1 above, each Party shall:

(a) make use of information and communications technology;

(b) reduce and simplify import and export documentation requirements; and

(c) harmonise its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council.

Article 54
Temporary Admission and Goods in Transit

1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, as may be amended (hereinafter referred to in this Article as “the A.T.A. Convention”).

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

3. The Parties shall endeavour to promote, through seminars and courses, the use of A.T.A. carnets pursuant to the A.T.A. Convention for the temporary admission of goods and the facilitation of customs clearance of goods in transit in the Parties or non-Parties.

4. For the purposes of this Article, the term "temporary admission" means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 55
Cooperation and Exchange of Information

1. The Parties shall cooperate and exchange information in the field of customs procedures, including their enforcement against trafficking of prohibited goods and importation and exportation of goods suspected of infringing intellectual property rights.

2. For the purposes of the effective implementation of paragraph 1 above, the Parties shall cooperate and exchange information, as provided for in the Implementing Agreement.

3. Article 8 shall not apply to the exchange of information under this Article.

Article 56
Sub-Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) reporting the findings of the Sub-Committee to the Joint Committee;

(c) identifying areas to be improved for facilitating trade between the Parties; and

(d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.

4. The Sub-Committee shall meet at such venues and times as may be agreed upon.

Chapter 5
Paperless Trading

Article 57
Cooperation on Paperless Trading between the Parties

The Parties, recognising that trading using electronic filing and transfer of trade-related information and electronic versions of documents such as bills of lading, invoices, letters of credit and insurance certificates, as an alternative to paper-based methods (hereinafter referred to in this Chapter as "paperless trading"), will significantly enhance the efficiency of trade through reduction of cost and time, shall cooperate with a view to realising and promoting paperless trading between them.

Article 58
Exchange of Views and Information

The Parties shall exchange views and information on realising, promoting and developments in paperless trading.

Article 59
Cooperation on Paperless Trading between Private Entities

The Parties shall encourage cooperation between their relevant private entities engaging in activities related to paperless trading. Such cooperation may include the setting up and operation by such private entities of facilities (hereinafter referred to in this Chapter as "the facilities") to provide efficient and secured flow of electronic trade-related information and electronic versions of relevant documents between enterprises of the Parties.

Article 60
Review of Realisation of Paperless Trading

The Parties shall review as soon as possible, and in any case, not later than 2 years after the date of entry into force of this Agreement, how to realise paperless trading in which electronic trade-related information and electronic versions of relevant documents exchanged between enterprises of the Parties through the facilities may be used as supporting documents by the trade regulatory bodies of the respective Parties.

Article 61
Sub-Committee on Paperless Trading

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Paperless Trading (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

   (a) reviewing the implementation and operation of this Chapter;

   (b) exchanging information on paperless trading;

   (c) discussing any issues related to this Chapter as may be agreed upon; and

   (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.

4. The Sub-Committee shall hold its inaugural meeting within 1 year after the date of entry into force of this Agreement. Subsequent meetings of the Sub-Committee shall be held at such venues and times as may be agreed upon.

Chapter 6
Mutual Recognition

Article 62
General Obligations

1. Each Party shall, in accordance with the provisions of this Chapter, permit participation of conformity assessment bodies of the other Party, in the system of the former Party providing for conformity assessment procedures and shall accept the results of conformity assessment procedures required by its applicable laws, regulations and administrative provisions specified in Annex 4, including certificates of conformity, which are conducted by the conformity assessment bodies of the other Party registered or designated by the Registering Authority or Designating Authority of the former Party with respect to the products manufactured in the other Party and imported therefrom into the former Party.

2. Where a licence is required by a Party in addition to certificates of conformity referred to in paragraph 1 above, for using marks of conformity, such licence shall be issued without delay upon submission of application for a licence so as not to be used as a means of avoiding obligations under paragraph 1 above.

Article 63
Scope and Coverage

1. This Chapter applies to registration or designation of conformity assessment bodies and conformity assessment procedures for products or processes covered by Annex 4. Annex 4 may consist of Part 1 and Part 2.

2. Part 1 of Annex 4 shall include, *inter alia*, provisions on scope and coverage.

3. Part 2 of Annex 4 shall set out the following matters:

   (a) the applicable laws, regulations and administrative provisions of each Party stipulating the products covered by this Chapter;

   (b) the applicable laws, regulations and administrative provisions of each Party stipulating the technical requirements covered by this Chapter and the conformity assessment procedures covered by this Chapter to satisfy such requirements;

(c) the applicable laws, regulations and administrative provisions of each Party stipulating the criteria for registration or designation of conformity assessment bodies; and

(d) the list of Registering Authorities or Designating Authorities.

Article 64
Definitions

1. For the purposes of this Chapter:

(a) the term "certificates of conformity" means documents issued by registered or designated conformity assessment bodies as a result of conformity assessment procedures, which state that products and/or processes fulfill relevant technical requirements set out in the applicable laws, regulations and administrative provisions of a Party specified in Annex 4;

(b) the term "conformity assessment bodies" means bodies which conduct conformity assessment procedures and issue certificates of conformity;

(c) the term "conformity assessment bodies of the other Party" means conformity assessment bodies located in the other Party;

(d) the term "conformity assessment procedures" means any procedures to determine, directly or indirectly, whether products or processes fulfill relevant technical requirements set out in the applicable laws, regulations and administrative provisions of a Party specified in Annex 4;

(e) the term "criteria for registration or designation" means the criteria which conformity assessment bodies of a Party are required to fulfill in order to be registered or designated by the Registering Authority or Designating Authority of the other Party, and other relevant conditions which conformity assessment bodies registered or designated by the Registering Authority or Designating Authority of the other Party are required to continuously fulfill after the registration or designation, as set out in the applicable laws, regulations and administrative provisions of that other Party specified in Annex 4;

(f) the term "licence", in case of Thailand, means a document issued by the Industrial Product Standards Council to permit the licensee to import for sale in Thailand, products which are required by the applicable Royal Decree to conform to the Thai Industrial Standard;

(g) the term "Registering Authority or Designating Authority" means an authority of a Party which is authorised to register or designate the conformity assessment bodies of the other Party and withdraw such registration or designation in accordance with the applicable laws, regulations and administrative provisions of the former Party specified in Annex 4; and

(h) the term "registration or designation" means the registration or designation of conformity assessment bodies of a Party by the Registering Authority or Designating Authority of the other Party pursuant to the applicable laws, regulations and administrative provisions of that other Party specified in Annex 4.

2. Any term used in this Chapter, unless otherwise defined herein, has the meaning assigned to it in the ISO/IEC Guide 2: 1996 Edition, "Standardization and related activities – General vocabulary".

Article 65
Registration or Designation of Conformity Assessment Bodies and Withdrawal thereof

1. (a) The Registering Authority or Designating Authority of a Party shall register or designate the conformity assessment bodies of the other Party in accordance with the applicable laws, regulations and administrative provisions of the former Party specified in Annex 4, where the conformity assessment bodies which apply for registration or designation fulfill the criteria for registration or designation of the former Party set out in its applicable laws, regulations and administrative provisions specified in Annex 4.

(b) The Registering Authority or Designating Authority of a Party may withdraw the registration or designation of the conformity assessment bodies of the other Party, where the conformity assessment bodies no longer fulfill the criteria for registration or designation of the former Party set out in its applicable laws, regulations and administrative provisions specified in Annex 4.

2. (a) For the purposes of confirming the fulfillment of the criteria for registration or designation by conformity assessment bodies of the other Party, the Registering Authority or Designating Authority of a Party may:

(i) make enquiries by means of written questionnaires to the conformity assessment bodies of the other Party or during the visit referred to in subparagraph (ii) below; and

(ii) conduct visit on the premises of the conformity assessment bodies of the other Party on the condition that such other Party does not object to such visit and the conformity assessment bodies concerned give consent to such visit and, if such other Party so requests, officials of the Registering Authority or Designating Authority of such other Party join the visit.

Note: If no objection is communicated to the Registering Authority or Designating Authority of the former Party within 14 days or a period specified by such Registering Authority or Designating Authority, whichever is longer, from the date of receipt of the request for the visit, it shall be deemed that no objection was made.

(b) The Registering Authority or Designating Authority of a Party shall immediately notify the other Party upon making enquiries by means of written questionnaires referred to in subparagraph (a)(i) above.

(c) The visit referred to in subparagraph (a)(ii) above shall be carried out in a manner not inconsistent with the laws and regulations of the Party where the visit takes place.

(d) A Party shall use the information obtained by its Registering Authority or Designating Authority in connection with such enquiries or visit only for the purposes referred to in subparagraph (a) above.

3. The Registering Authority or Designating Authority of a Party may withdraw the registration or designation of the conformity assessment bodies of the other Party, where the enquiries specified in subparagraph 2(a)(i) above are not responded to without valid reasons or are responded to falsely, or the other Party objects to the visit or the conformity assessment bodies concerned do not give consent referred to in subparagraph 2(a)(ii) above, or the visit specified in subparagraph 2(a)(ii) above is refused, obstructed or evaded.

Article 66
Sub-Committee on Mutual Recognition

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Mutual Recognition (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) exchanging information on standards and conformity assessment procedures, in view of further enhancement of capabilities of each Party's conformity assessment bodies to conduct conformity assessment procedures required by the other Party's applicable laws, regulations and administrative provisions specified in Annex 4;

(b) discussing ways to promote cooperation between the Parties in view of the effective implementation and operation of this Chapter;

(c) reviewing the implementation and operation of this Chapter;

(d) discussing any other issues related to this Chapter as may be agreed upon;

(e) reporting the findings of the Sub-Committee to the Joint Committee; and

(f) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

Article 67
Contact Points

Each Party shall designate a contact point to answer all reasonable enquiries related to this Chapter from the other Party and, where appropriate, to provide the other Party with the relevant information.

Article 68
General Exceptions

Nothing in this Chapter shall be construed to limit the authority of a Party to take measures it considers appropriate, for protecting health, safety or the environment, or for preventing deceptive practices.

Article 69
Miscellaneous Provisions

1. Nothing in this Chapter shall be construed to authorise a Party to take compulsory measures to the conformity assessment bodies of the other Party or on the representatives, employees and other personnel of such bodies. It is confirmed that each Party shall not impose any criminal, civil or administrative penalties on the conformity assessment bodies of the other Party or on their representatives, employees and other personnel in connection with this Chapter.

Note: The term "administrative penalties" does not include the withdrawal of registration or designation referred to in Article 65.

2. Nothing in this Chapter shall be construed to oblige a Party to accept the standards of the other Party.

3. Nothing in this Chapter shall be construed to affect the rights and obligations of either Party under the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement, as may be amended.

Article 70
Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it in confidence pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained pursuant to this Chapter shall not be used by a Party in any criminal proceedings carried out by a court or a judge, unless the information is requested from the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

Chapter 7
Trade in Services

Article 71
General Principles

The general principles of this Chapter are:

(a) to liberalise trade in services between the Parties, in accordance with third paragraph of the preamble and Article V of the GATS; and

(b) to provide a framework for the Parties to improve the efficiency, competitiveness and diversity of services and service suppliers.

Article 72
Scope and Coverage

1. This Chapter shall apply to measures by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) in respect of air transport services, measures affecting traffic rights, however granted; or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(b) cabotage in maritime transport services;

(c) subsidies or grants provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, insurance and any conditions attached to the receipt or continued receipt of such subsidies or grants;

(d) measures pursuant to immigration laws and regulations;

(e) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis; and

(f) government procurement.

3. With respect to financial services, the Annex on Financial Services to the GATS shall apply *mutatis mutandis*.

Note: The term "Panels" referred to in paragraph 4 of the Annex on Financial Services to the GATS shall be deemed to read "arbitral tribunals" referred to in Chapter 14 of this Agreement.

4. Except for Articles 77, 82, 89 and 114, paragraph 4 of Article 90 and Chapters 13 and 14, any rights and obligations under this Agreement which are not contained in the GATS shall not apply to financial services.

Article 73
Definitions

For the purposes of this Chapter:

(a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(b) the term "Area" means with respect to a Party:

(i) the territory of that Party, including its territorial sea; and

(ii) the exclusive economic zone and the continental shelf with respect to which that Party exercises sovereign rights or jurisdiction in accordance with international law;

(c) the term "commercial presence" means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of an enterprise; or

Note: The term "acquisition" includes partial acquisition of equity participation in an enterprise supplying a service.

(ii) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purposes of supplying a service;

(d) the term "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(e) the term "enterprise" 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;

(f) the term "enterprise of the other Party" means an enterprise which is either:

(i) constituted or otherwise organised under the law of the other Party and is engaged in substantive business operations in that other Party; or

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

(AA) natural persons of the other Party; or

(BB) enterprises of the other Party identified under subparagraph (i) above;

(g) an enterprise is:

(i) "owned" by persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons;

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

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(h) the term "existing" means in effect as of the date of entry into force of this Agreement;

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

(j) the term "measures by a Party" means measures taken by:

(i) central or local governments and authorities; and

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

in fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and authorities and non-governmental bodies in the exercise of powers delegated by its central or local governments and authorities within its Area;

(k) the term "measures by a Party affecting trade in services" includes measures in respect of:

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

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

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

(l) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(m) the term "natural person of the other Party" means a natural person who resides in the other Party or elsewhere and who under the law of the other Party is a national of the other Party;

(n) the term "person" means either a natural person or an enterprise;

(o) the term "sector" of a service means:

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of specific commitments in Annex 5; or

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

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

(q) the term "service consumer" means any person that receives or uses a service;

(r) the term "service of the other Party" means a service which is supplied:

(i) from or in the Area of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

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

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

(t) the term "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(u) the term "service supplier" means any person that supplies a service;

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

(v) the term "service supplier of the other Party" means any natural person of the other Party or enterprise of the other Party, that supplies a service;

(w) the term "state enterprise" means an enterprise owned or controlled by a Party;

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

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

(i) from the Area of one Party into the Area of the other Party ("cross-border supply mode");

(ii) in the Area of one Party to the service consumer of the other Party ("consumption abroad mode");

(iii) by a service supplier of one Party, through commercial presence in the Area of the other Party ("commercial presence mode"); and

(iv) by a service supplier of one Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and

(z) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

Article 74
Market Access

1. With respect to market access through the modes of supply defined in paragraph (y) of Article 73, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments in Annex 5.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (y)(i) of Article 73 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (y)(iii) of Article 73, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of specific commitments in Annex 5, are defined as:

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

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

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

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

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

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

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

Article 75
National Treatment

1. In the sectors inscribed in its Schedule of specific commitments in Annex 5, 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 supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

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

2. A Party may meet the requirement of paragraph 1 above 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 a Party compared to like services or service suppliers of the other Party.

4. A Party may not invoke the preceding paragraphs of this Article under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation.

Article 76
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 74 and 75, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments in Annex 5.

Article 77
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 74, 75 and 76.

2. With respect to sectors where the specific commitments are undertaken, each Schedule of specific commitments in Annex 5 shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the time-frame for implementation of such commitments.

3. Measures inconsistent with both Articles 74 and 75 shall be inscribed in the column relating to Article 74. This inscription will be considered to provide a condition or qualification to Article 75 as well.

4. With respect to sectors or subsectors where the specific commitments are undertaken and which are scheduled "SS", all the existing measures inconsistent with Articles 74 and 75 shall be inscribed as terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above.

5. For the purposes of transparency, sectors and subsectors which are not subject to any specific commitment under Article 74, 75 or 76 shall also appear in the Schedules of specific commitments in Annex 5.

6. Schedules of specific commitments shall be annexed to this Agreement as Annex 5.

Note: Services Sectoral Classification List (GATT Secretariat's Document MTN.GNS/W/120, dated 10 July 1991) serves as a guideline for the Parties in listing all services sectors in their respective schedules.

Article 78
Modification of Schedules

1. Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with paragraph 1 of Article 171. In the negotiations for such modification or withdrawal, the Parties shall endeavour, in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in their Schedules of specific commitments in Annex 5 prior to such negotiations.

2. With regard to the same commitment that appears in a Party's Schedule of specific commitments under both the GATS and this Agreement, if modification or withdrawal has been made to such commitment with regard to its Schedule of specific commitments under the GATS and compensatory adjustment has been made to the other Party as an "affected Member" in accordance with Article XXI of the GATS, the Parties shall agree to amend this Agreement to incorporate such modification or withdrawal into it without further negotiation, subject to their applicable domestic procedures.

Article 79
Most-Favoured-Nation Treatment

If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.

Article 80
Domestic Regulation

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

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

3. The provisions of paragraph 2 above shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

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

5. In sectors where a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(a) does not comply with the following criteria:

(i) based on objective and transparent criteria, such as competence and the ability to supply the service;

(ii) not more burdensome than necessary to ensure the quality of the service; or

(iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

6. In sectors not subject to specific commitments in its Schedule, a Party shall endeavour to ensure that licensing and qualification requirements and technical standards are in conformity, to the extent possible, with the criteria outlined in subparagraph 5(a) above.

7. In determining whether a Party is in conformity with its obligations under paragraph 5 above, account shall be taken of international standards of relevant international organisations applicable to that Party.

Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

Article 81
Mutual Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1 above, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met or licences or certifications granted in the non-Party, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

Article 82
Transparency

Each Party shall prepare a non-legally binding list providing all relevant laws and regulations affecting the obligations under Articles 74, 75 and/or 76 in all sectors. Such a list shall be exchanged with the other Party and made public at the time of entry into force of this Agreement and shall be subject to future review and revision as necessary.

Note: The list under this Article is made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. Any review or revision under this Article is solely for the purposes of updating such list.

Article 83
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's specific commitments.

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

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

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

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

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

Article 84
Emergency Safeguard Measures

The Parties shall enter into consultations with a view to starting negotiations on emergency safeguard measures no later than 6 months after the date of entry into force of this Agreement. The results of such negotiations, if any, shall be incorporated into this Chapter in accordance with paragraph 1 of Article 171.

Article 85
Payments and Transfers

1. Except under the circumstances envisaged in Article 86, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to in this Article as "the Fund") under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, as may be amended, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 86, or at the request of the Fund.

Article 86
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.

2. The restrictions referred to in paragraph 1 above:

(a) shall be applied on a national treatment basis;

(b) shall ensure that the other Party is treated as favourably as any non-Party;

(c) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;

(d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

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

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

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly notified to the other Party.

5. The Party applying any restrictions in accordance with paragraph 1 above may, upon request by the other Party, commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party.

Article 87
Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise where the Party establishes that the service supplier is owned or controlled by persons of a non-Party.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise where the Party establishes that the service supplier is owned or controlled by persons of a non-Party, and that denying Party:

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

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

Article 88
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) exchanging information on domestic laws and regulations;

(c) discussing any issues related to this Chapter as may be agreed upon;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

Article 89
Review

1. The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a general review of all services sectors including transport services, tourism services, financial services and telecommunications services. Such general review shall include a review on the scope of commitments scheduled "SS".

2. The Parties shall enter into separate negotiations within 3 years after the date of entry into force of this Agreement for a review of maintenance and repair services, wholesale trade and retailing services and rental services.

3. The review referred to in paragraph 1 or 2 above shall include a review on the scope of any commitments as well as the terms, limitations, conditions, qualifications or undertakings inscribed in the Schedules of specific commitments in Annex 5 of the Parties regarding the above-mentioned services and be guided by the principle of progressive liberalisation as embodied in the GATS.

4. The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a review of the provisions of paragraph 4 of Article 72 and paragraph 1 of Article 87.

Chapter 8
Investment

Article 90
Scope and Coverage

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

(a) investors of the other Party;

(b) investments of investors of the other Party in the Area of the former Party; and

(c) with respect to Article 111, all investments in the Area of the former Party.

2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

3. This Chapter shall not apply to measures by a Party relating to investors of the other Party and their investments in service sectors.

4. Notwithstanding paragraph 3 above:

(a) Articles 94, 95, 96, 100, 102, 103, 105, 106, 107, 109, 110, 111 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in service sectors other than financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments; and

(b) Articles 94, 102, 103, 105, 109 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments.

Note 1: For the purposes of subparagraph (b) above, compensation under Article 102, if any, shall be no more than the net asset value which is calculated from the difference between the value of assets and the value of liabilities including contingent liabilities of the affected enterprise supplying financial services.

Note 2: Within the definition of investments under this Chapter, investments referred to in subparagraph (b) above shall be limited to equity interest, reinvested earnings and permanent debt (that is loan capital).

5. Articles 93 and 96 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as "the TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

6. This Chapter shall not apply to laws, regulations or procedures and practices governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

Article 91
Definitions

For the purposes of this Chapter:

(a) the term "Area" means with respect to a Party:

(i) the territory of that Party, including its territorial sea; and

(ii) the exclusive economic zone and the continental shelf with respect to which that Party exercises sovereign rights or jurisdiction in accordance with international law;

(b) the term "buyer credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor of a Party makes a loan directly to the buyer of imported goods or the consumer of services other than financial services in the Area of the other Party specifically for the purpose of enabling the buyer or the consumer to make payments to a seller of the goods or a provider of the services in the Area of the former Party in relation to the sales contract of the goods or the services between the seller or the provider and the buyer or the consumer, but does not include a credit which is repaid within 3 years from the starting date of the financing contract;

(c) the term "direct investment enterprise" means:

(i) an enterprise in the Area of a Party in which an investor of the other Party directly owns at least 10 per cent of the total equity interest in the enterprise; or

(ii) an enterprise in the Area of a Party in which an investor of the other Party, whether directly and indirectly, or indirectly, owns equity interest such that at least 10 per cent of the total equity interest in that enterprise is attributable to such investor;

(d) the term "direct investor" means:

(i) an investor of a Party who directly owns at least 10 per cent of the total equity interest in an enterprise in the Area of the other Party; or

(ii) an investor of a Party who directly and indirectly, or indirectly, owns equity interest in an enterprise in the Area of the other Party such that at least 10 per cent of the total equity interest in that enterprise is attributable to such investor;

Note: For the purposes of subparagraphs (c) and (d) above, "indirectly owns" means ownership of equity interest in an enterprise by an investor through one or more successive enterprises, each of which directly owns at least 10 per cent of the total equity interest of the next enterprise. Such ownership by the investor shall be based on the investor's level of equity interest in such enterprises. The level of equity interest in each enterprise shall be sufficient to ensure attribution of at least 10 per cent of the total equity interest of that enterprise to that investor.

(e) the term "enterprise of the other Party" means any legal entity duly constituted or organised under applicable law of the other Party, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;

(f) an enterprise is:

(i) "owned" by persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons; and

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

(g) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of GATS;

(h) the term "freely usable currencies" means freely usable currencies as determined by the International Monetary Fund under the Articles of the Agreement of the International Monetary Fund, as may be amended;

(i) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

Note: With respect to Article 111, the term "investment activities" includes those activities by investors of non-Parties, in which case the term "investments" also includes those owned by investors of non-Parties.

(j) the term "investments" means:

(i) the following assets owned by a direct investor:

(AA) shares, stocks or other forms of equity interest in a direct investment enterprise, including rights derived therefrom;

(BB) reinvested earnings in a direct investment enterprise; or

(CC) bonds, debentures, other debt instruments and loans between a direct investor and its direct investment enterprise, including rights derived therefrom;

(ii) the following assets owned by a direct investment enterprise or its direct investor, arising out of transactions between the direct investor and the direct investment enterprise:

(AA) claims to money and claims to any performance under contracts having a financial value;

(BB) intellectual property rights as recognised by the laws and regulations of the Party in whose Area the investment is made;

(CC) rights conferred pursuant to the laws and regulations of the Party in whose Area the investment is made or contracts such as concessions, licences, authorisations, and permits; or

(DD) any other tangible and intangible, movable and immovable property, and any property rights, such as leases, mortgages, liens and pledges; or

(iii) the following assets directly owned by an investor:

(AA) supplier credit where the original maturity is at least 3 years;

(BB) buyer credit where the original maturity is at least 3 years;

(CC) project financing where the original maturity is at least 5 years; or

(DD) rights under turnkey contracts;

Note 1: The term "investments" includes amounts yielded by investments, in particular, profits, capital gains, dividends, royalties, interests, fees and other current incomes. A change in the form in which assets are invested does not affect their character as investments.

Note 2: With respect to subparagraph 1(c) of Article 90, the term "investments" also includes those owned by investors of non-Parties.

(k) the term "investor of the other Party" means a national or an enterprise that is making, or has made, investments in the Area of a Party and is a national or an enterprise of the other Party, except a branch of an enterprise of a non-Party which is located in the Area of the other Party;

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

(m) the term "measures by a Party" means measures adopted or maintained by central or local governments and authorities;

(n) the term "national of the other Party" means a natural person having the nationality of the other Party in accordance with its applicable laws and regulations;

(o) the term "person" means either a natural person or an enterprise;

(p) the term "project financing" means a loan under a financing contract under which an investor of a Party makes a loan of a fixed amount to an enterprise established in the Area of the other Party for the specific purpose of enabling that enterprise to carry out a particular project, where the assets of the project are furnished as collateral for the loan, but does not include a loan which is repaid within 5 years from the starting date of the financing contract;

Note: The project referred to in subparagraph (p) above shall be economically value-added, and not purely engaged in financial transactions only.

(q) the term "reinvested earnings" means direct investor's share, in proportion to equity interest, of earnings which are not distributed as dividends or remitted from a direct investment enterprise to its direct investor;

(r) the term "supplier credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor who is a seller of exported goods or a provider of services other than financial services in the Area of a Party allows the buyer of the goods or the consumer of the services in the Area of the other Party to defer payment under the sales contract of the goods or the services between the investor and the buyer or the consumer, but does not include a credit which is repaid within 3 years from the starting date of the financing contract; and

(s) the term "transfers" means transfers and international payments.

Article 92
Observance of the Provisions of this Chapter

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and authorities within its Area.

Article 93
National Treatment

1. In the sectors inscribed in Part 1 of Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition and expansion of investments in its Area.

2. Each Party shall, subject to its laws and regulations existing on the date of entry into force of this Agreement, accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.

3. Paragraph 2 above shall not apply to any measures specified by a Party in Part 2 of Annex 6.

Article 94
Access to the Courts of Justice

Each Party shall in its Area accord to investors of the other Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a non-Party with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 95
Minimum Standard of Treatment

Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 96
Most-Favoured-Nation Treatment

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement with respect to the establishment, acquisition and expansion of investments.

2. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.

3. Paragraph 2 above shall not be construed so as to oblige a Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of any customs union, free trade area, a monetary union, similar international agreements leading to such unions or free trade areas, or other forms of regional economic cooperation to which either Party is or may become a party.

4. Paragraph 2 above shall not apply to any measures specified by a Party in Part 3 of Annex 6.

Article 97
Performance Requirements

1. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for investment activities in its Area, any performance requirements, unless otherwise specified in Part 1 of Annex 6.

2. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for granting or continued granting of an advantage, any performance requirements in connection with investment activities in its Area, unless otherwise specified in Part 1 of Annex 6.

3. Nothing in this Article and Annex 6 shall affect the rights and obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended.

Article 98
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under paragraph 1 of Article 93 and paragraphs 1 and 2 of Article 97.

2. With respect to sectors where the commitments are undertaken, each Schedule of specific commitments in Part 1 of Annex 6 shall specify, where applicable:

(a) conditions and qualifications on national treatment; and

(b) any commitments on performance requirements.

3. Schedule of specific commitments shall be annexed to this Agreement as Part 1 of Annex 6.

Article 99
Modification of Commitments

Any modification or withdrawal of specific commitments under this Chapter shall be made in accordance with Article 171. In the negotiations for such modification or withdrawal, the Parties shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to investment than that provided for in their Schedules of specific commitments in Annex 6 prior to such negotiations.

Article 100
Acquired Treatment

Each Party shall maintain, in accordance with its laws and regulations, the level of treatment which has been accorded to investors of the other Party and their investments with respect to investment activities.

Article 101
Transparency

1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application with respect to any matter covered by this Chapter are published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible under its domestic laws and regulations, each Party shall:

(a) publish any such laws, regulations, administrative procedures and administrative rulings of general application that it adopts; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such measures.

Article 102
Expropriation and Compensation

1. Neither Party shall expropriate or nationalise investments in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) upon payment of prompt, adequate and effective compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall carry an appropriate interest, in accordance with the laws and regulations of the Party making the expropriation. It shall be effectively realisable and freely transferable in a freely usable currency and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies.

4. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case and the amount of compensation in accordance with the principles set out in this Article.

Article 103
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a non-Party.

2. Any payments made pursuant to paragraph 1 above shall be effectively realisable, freely convertible and freely transferable in a freely usable currency.

Article 104
Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely in a feely usable currency and without delay. Such transfers shall include:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including loan payments in connection with investments;

(e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;

(f) payments made in accordance with Articles 102 and 103; and

(g) payments arising out of the settlement of a dispute under Article 106.

2. Neither Party shall prevent transfers referred to in paragraph 1 above from being made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer referred to in paragraph 1 above through the equitable, non-discriminatory and good-faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal matters; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 105
Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or contract of insurance, arising from or pertaining to an investment of that investor within the Area of the other Party, the other Party shall:

(a) recognise the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and

(b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Articles 102, 103 and 104 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

Article 106
Settlement of Investment Disputes between a Party and an Investor of the Other Party

1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party concerning a claim that the investor has incurred loss or damage by reason of, or arising out of, an alleged breach of an obligation under this Chapter by the former Party.

2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

3. If the investment dispute cannot be settled through such consultations within 6 months from the date on which the investor requested for the consultations in writing and if the investor concerned has not submitted the investment dispute for resolution to courts of justice or administrative tribunals under the law of the Party that is a party to the investment dispute (hereinafter referred to in this Article as the "disputing Party"), that investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, 18 March 1965, as may be amended (hereinafter referred to in this Article as "the ICSID Convention"), provided that both Parties are parties to the ICSID Convention;

(b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, as may be amended provided that one of the Parties is a party to the ICSID Convention; or

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on 28 April 1976, as may be amended.

In respect of a particular claim, exercise of the right under this paragraph to submit an investment dispute to an arbitration shall be deemed to have been made to the exclusion of any other dispute settlement procedures specified in this paragraph and proceedings before courts of justice or administrative tribunals under the law of the disputing Party, unless the arbitration proceedings have been terminated before a final award on the merit of the case has been rendered.

4. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified by this Article.

5. An investor that is a party to an investment dispute who intends to submit an investment dispute pursuant to subparagraph 3(a), (b) or (c) above (hereinafter referred to in this Article as the "disputing investor") shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and

(c) the dispute settlement procedures set forth in subparagraph 3(a), (b) or (c) above which the disputing investor intends to choose.

6. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in this Article. If more than 2 years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated.

7. Paragraph 3 above shall not prevent the disputing investor from initiating or continuing an action that seeks interim injunctive relief that does not involve the payment of damages before courts of justice or administrative tribunals under the law of the disputing Party provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests while the arbitration is pending.

8. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as the "disputing parties") agree otherwise, the arbitral tribunal shall comprise 3 arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator within 75 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes, upon request by either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed subject to the requirement of paragraphs 9 and 10 below.

9. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Party, nor have his or her usual place of residence in the Area of either of the Parties, nor be employed by either of the disputing parties at the time of his or her appointment.

10. Each of the disputing parties may indicate up to 3 nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the International Centre for Settlement of Investment Disputes may not appoint as an arbitrator any person whose nationality is indicated by any of the disputing parties.

11. Any arbitration under this Article shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, as may be amended.

12. Where an arbitral tribunal makes a final award against a disputing Party, it may award, separately or in combination, only:

(a) payment of monetary damages and applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

13. Any arbitral award rendered pursuant to this Article shall be final and binding upon the disputing parties. Each Party shall carry out without delay the provisions of any such award and provide in its Area for the enforcement of such award in accordance with its relevant laws and regulations.

14. In an arbitration under this Article, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

15. This Article shall not apply to investment disputes:

(a) arising out of events which occurred, or to investment disputes which had been settled, prior to the entry into force of this Agreement;

(b) with respect to obligations under Article 97; and

(c) with respect to measures other than those relating to the management, conduct, operation, maintenance, use, enjoyment, and sale or other disposition of investments.

Article 107
Special Formalities

Notwithstanding Articles 93 and 96, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

Article 108
Temporary Safeguard Measures

1. A Party may adopt or maintain measures inconsistent with its obligations under Article 93 relating to cross-border capital transactions and Article 104:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause economic or financial crisis.

2. The measures referred to in paragraph 1 above:

(a) shall ensure that the other Party is treated as favourably as any non-Party;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;

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

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

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

3. In determining the incidence of such measures, a Party may give priority to the sectors which are more essential to its economic development. However, such measures shall not be adopted or maintained for the purposes of protecting a particular sector.

4. Any measures adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly notified to the other Party.

5. The Party applying any measures in accordance with paragraph 1 above may, upon request by the other Party, commence consultations with the other Party promptly in order to review the measures adopted by the former Party.

6. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 109
Prudential Measures and Measures to Ensure the Stability of the Macroeconomy or the Exchange Rate

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking:

(a) measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system; or

(b) measures to ensure the stability of the macroeconomy or the exchange rate.

Note: The measures referred to in subparagraph (b) above include measures relating to monetary policy or measures to deter speculative capital flows. Such measures shall be no more than necessary to meet the objectives of ensuring the stability of the macroeconomy or the exchange rate. Measures to ensure the stability of the macroeconomy or the exchange rate do not cover measures relating to promotion or protection of a particular sector.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 110
Taxation Measures as Expropriation

1. Article 102 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 102.

2. Where paragraph 1 above applies, Articles 94 and 106 shall also apply in respect of taxation measures.

3. (a) No investor may invoke Article 102 as the basis for an investment dispute under Article 106, where it has been determined pursuant to subparagraph (b) below that the measure is not an expropriation.

(b) The investor who seeks to invoke Article 102 with respect to a taxation measure shall refer the issue, at the time that it gives a written request under paragraph 5 of Article 106, to the competent authorities of both Parties to determine whether such a measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 106.

(c) For the purpose of subparagraph (b) above, the term "competent authorities" means:

(i) in the case of Japan, the Minister of Finance or his authorised representative; and

(ii) in the case of Thailand, the Minister of Finance or his authorised representative.

Article 111
Environmental Measures

Each Party recognises that it is inappropriate to encourage investment by relaxing its environmental measures. To this effect, each Party shall not waive or otherwise derogate from such environmental measures as an encouragement for investment activities in its Area.

Article 112
Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of such investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and the denying Party:

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

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of such investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the Area of that other Party.

Article 113
Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) exchanging information on any matters related to this Chapter;

(c) discussing any issues related to this Chapter as may be agreed upon;

(d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions which may be delegated by the Joint Committee in accordance with Article 13.

Article 114
Review

The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a general review of their commitments made under Articles 93 and 97 in all non-service sectors and shall enter into negotiation within the sixth year after the date of entry into force of this Agreement for a review of the provisions of paragraphs 4 and 6 of Article 90 and of Article 96.

Chapter 9
Movement of Natural Persons

Article 115
Scope and Coverage

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the other Party and fall under one of the categories referred to in paragraph 1 of Article 117.

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

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

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 116
Definition

For the purposes of this Chapter, the term "natural person of the other Party" means a natural person who resides in the other Party or elsewhere and who under the law of the other Party is a national of that other Party.

Article 117
Specific Commitments

1. Each Party shall set out in Annex 7 the specific commitments it undertakes for any of the following categories:

(a) short-term business visitors of the other Party;

(b) intra-corporate transferees of the other Party;

(c) investors of the other Party;

(d) natural persons of the other Party who engage in professional services;

(e) natural persons of the other Party who engage in business activities, which require technology or knowledge at an advanced level or which require specialised skills belonging to particular fields of industry, on the basis of a personal contract with public or private organisations in the former Party; and

(f) instructors of the other Party.

2. Natural persons covered by a specific commitment referred to in paragraph 1 above shall be granted entry and temporary stay in accordance with the terms and conditions of the specific commitment set out in Annex 7, provided that the natural persons comply with immigration laws and regulations applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.

3. Neither Party shall impose or maintain any limitations on the total number of visas to be granted in the Parties to natural persons of the other Party under paragraph 1 above, unless otherwise specified in Annex 7.

Article 118
Requirements and Procedures Relating to the Movement of Natural Persons

1. Each Party shall publish or otherwise make available to the other Party on the date of entry into force of this Agreement, with respect to natural persons covered by that Party's specific commitments under this Chapter, information on requirements and procedures necessary for an effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party.

2. Each Party shall endeavour to provide, upon request by a natural person of the other Party, information on requirements and procedures referred to in paragraph 1 above.

3. Each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures, or changes in any existing requirements and procedures referred to in paragraph 1 above that affect the effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party.

4. Each Party shall ensure that fees charged by its competent authorities on application referred to in paragraph 1 above do not in themselves represent an unjustifiable impediment to movement of natural persons under this Chapter.

5. Each Party shall endeavour, to the maximum extent possible, to take measures to simplify the requirements and to facilitate and expedite the procedures relating to the movement of natural persons of the other Party within the framework of its laws and regulations. Specific commitments on such measures shall be set out in Annex 7.

Article 119
Mutual Recognition

1. For the purposes of facilitating movement of natural persons under this Chapter, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of natural persons of the other Party.

2. Recognition referred to in paragraph 1 above, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met or licences or certifications granted in the non-Party, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

Article 120
Sub-Committee on Movement of Natural Persons

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) reviewing the scope of the commitments of the Parties under this Chapter including seeking possibilities for the Parties to make commitments that are not included in the specific commitments under paragraph 1 of Article 117, taking into account the Parties' respective needs and mutual benefits;

(c) discussing any issues related to this Chapter as may be agreed upon;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall work in close consultation with the Special Sub-Committee on Mutual Recognition provided for under subparagraph 6 below and shall take into consideration the findings of the Special Sub-Committee referred to in subparagraph 6(b)(v) below.

4. The Sub-Committee shall be composed of representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at least once a year.

6. (a) For the purposes of the effective implementation and operation of Article 119, the Sub-Committee shall establish a Special Sub-Committee on Mutual Recognition (hereinafter referred to in this Article as "Special Sub-Committee").

(b) The functions of the Special Sub-Committee shall be:

(i) reviewing the implementation and operation of the said Article;

(ii) seeking possibilities for the Parties to make commitments on matters referred to in the said Article, taking into account the Parties' respective needs and mutual benefits;

(iii) identifying areas for and ways of furthering cooperation between the Parties in the matters concerning mutual recognition;

(iv) discussing any issues related to the said Article as may be agreed upon; and

(v) reporting the findings of the Special Sub-Committee, through the Sub-Committee, to the Joint Committee.

Article 121
Further Negotiations

The Parties shall, after the date of the entry into force of this Agreement, enter into negotiations with each other in accordance with Annex 7.

Chapter 10
Intellectual Property

Article 122
General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for the enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property:

(a) that are subject of Articles 130 through 137; or

(b) that are under the TRIPS Agreement or the relevant international agreements referred to in the TRIPS Agreement.

3. The Parties recognise the importance of the international agreements which provide the international standards of protection of intellectual property.

4. The Parties reaffirm their commitment to comply with the obligations set out in the following international agreements and the cited provisions thereof:

(a) the TRIPS Agreement;

(b) the Berne Convention; and

(c) Articles 1 through 12, and Article 19 of the Paris Convention.

Article 123
Definitions

For the purposes of this Chapter:

(a) the term "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as amended and as may be amended;

(b) the term "Nice Agreement" means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and as may be amended;

(c) the term "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as amended and as may be amended;

(d) the term "rights management information" means information which identifies a work, performance or phonogram; the author of the work, the performer of the performance or the producer of the phonogram; the owner of any right in the work, performance, or phonogram; or information about the terms and conditions of the use of the work, performance, or phonogram; and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance or a phonogram or appears in connection with the communication or making available of a work, a fixed performance or a phonogram to the public; and

(e) the term "Strasbourg Agreement" means the Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971, as amended and as may be amended.

Article 124
National Treatment

Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.

Note: For the purposes of this Chapter, "nationals" shall have the same meaning as in the TRIPS Agreement. For the purposes of Articles 124 and 125, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article 125
Most-Favoured-Nation Treatment

Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement.

Article 126
Streamlining and Harmonisation of Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.

2. Applications for and grants of patents and publications thereof shall, to the fullest extent possible, be classified in accordance with the international patent classification system established under the Strasbourg Agreement. Applications for registrations of and registrations of trademarks for goods and services and publication thereof shall, to the fullest extent possible, be classified in accordance with the international classification system of goods and services established under the Nice Agreement.

3. Each Party shall ensure that any filing of an application for a patent, or for a registration of a utility model, or of an industrial design, or of a trademark that is equivalent to a regular national filing be recognised as giving rise to the right of priority stipulated in Article 4 of the Paris Convention.

Note: For the purposes of this paragraph, "regular national filing" means any filing that is adequate to establish the date on which the application was filed in any party to the Paris Convention or member of the World Trade Organization (hereinafter referred to in this Chapter as "the WTO"), whatever may be the subsequent fate of the application.

Article 127
Transparency

For the purposes of further promoting transparency in the administration of intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

(a) publish or make easily available to the public information on applications for and grants of patents and applications for registrations of and registrations of utility models, industrial designs, trademarks, layout-designs of integrated circuits and new varieties of plants, and information contained in the files thereof held by the competent authorities;

(b) make easily available to the public information on applications for the suspension by the customs authority of the release of goods infringing intellectual property rights; and

(c) make easily available to the public information (including statistical information) on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property protection system.

Article 128
Promotion of Public Awareness Concerning Protection of Intellectual Property

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 129
Objectives

1. 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.

2. This Chapter should be interpreted and implemented in a manner supportive of the Parties' rights to take measures to protect public health in accordance with the TRIPS Agreement and the decisions by the Ministerial Conference or the General Council of the WTO, related to the TRIPS Agreement and public health.

Article 130
Patents

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application in accordance with Article 27 of the TRIPS Agreement.

2. Each Party shall ensure that a claimed invention shall not be new, if it is publicly known, described in a publication distributed or made available to the public through telecommunication line in either Party or in any non-Party before the filing date of the patent application for the invention or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.

3. Each Party shall ensure that any patent application shall not be rejected solely on the grounds that the subject matter claimed in the application is related to a naturally occurring micro-organism.

Article 131
Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original in accordance with Article 25 of the TRIPS Agreement.

2. Each Party shall ensure that a claimed industrial design shall not be new, if it is publicly known or described in a publication distributed in either Party or in any non-Party before the filing date of the application for the registration of the industrial design or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.

3. Each Party shall ensure that the owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy of the protected design, when such acts are undertaken for commercial purposes.

Article 132
Trademarks for Goods and Services

1. Each Party shall ensure that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

2. Each Party shall provide, in at least one of the following circumstances, that the registration of a trademark, which is identical or similar to a trademark well-known in either Party or in any non-Party as indicating the goods or services of another person shall be refused or cancelled:

(a) if use of that trademark is for unfair intentions, *inter alia*, intention to gain an unfair profit or intention to cause damage to such person; or

(b) if the public might be confused as to the owner or origin of the goods or services.

Article 133
Copyright and Related Rights

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

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

3. Each Party shall endeavour to provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyright or related rights:

(a) to remove or alter any electronic rights management information without authority; and

(b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

4. Each Party shall, in accordance with its laws and regulations, take appropriate measures to facilitate the activities to be conducted by the collective management organisations for copyright and related rights in that Party.

Article 134
Geographical Indications

1. Each Party shall ensure, in accordance with its laws and regulations and in conformity with relevant international agreements to which both Parties are parties, protection of geographical indications with regard to any goods.

2. The Parties shall exchange views on issues relating to protection of geographical indications including any strengthening of such protection. The Sub-Committee on Intellectual Property referred to in Article 143 shall provide a forum for this purpose.

Article 135
New Varieties of Plants

1. The Parties recognise the importance of protecting new varieties of plants in a manner based on international standards. For this purpose, each Party shall ensure that rights relating to new varieties of plants are adequately protected.

2. Each Party shall, having due regard to concerns of the other Party, endeavour to protect as many plant genera or species as possible in a manner stated in paragraph 1 above as early as practicable.

3. Notwithstanding Articles 124 and 125, each Party may, in accordance with its laws and regulations, limit the scope of the plant genera or species for which the Party accords the rights referred to in paragraph 1 above to the nationals of the other Party to the genera or species for which the other Party accords the rights to the nationals of the former Party.

Article 136
Unfair Competition

1. Each Party shall provide for effective protection against unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

3. Each Party shall establish appropriate remedies to prevent or punish the acts of unfair competition referred to in subparagraph 2(a) through (c) above.

Article 137
Protection of Undisclosed Information

Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article 138
Enforcement – Border Measures

1. Each Party shall, in accordance with Article 51 and 52 of the TRIPS Agreement, provide for procedures concerning the suspension by the customs authority of the release of infringing goods at least in cases of infringement of trademarks and copyrights and related rights.

2. Each Party shall ensure that the procedures referred to in paragraph 1 above do not impose upon the right holders who filed the applications for such procedures overly burdensome requirements concerning provision of evidence of infringement.

3. Where the competent authorities of a Party has decided to suspend the release of goods infringing trademarks, or copyrights or related rights, the competent authorities of that Party shall, in accordance with that Party's laws and regulations, inform the right holder of the names and addresses of the consignor and the importer of the goods in question.

4. Each Party shall ensure, in cases of infringement of trademarks or copyrights or related rights, that its competent authorities may initiate border measures *ex officio*, without the need for an application by the right holder whose intellectual property rights have been infringed.

5. Each Party shall ensure that its competent authorities do not allow the re-exportation of the goods infringing trademarks or copyrights or related rights other than in exceptional circumstances.

Article 139
Enforcement – Civil Remedies

Each Party shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

Article 140
Enforcement – Criminal Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of infringement of patents, utility models, industrial designs, trademarks, copyrights and related rights, layout-designs of integrated circuits and rights relating to new varieties of plants, committed wilfully and on a commercial scale.

2. The penalties referred to in paragraph 1 above shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

3. Each Party shall provide its judicial authority with the authority to order, in cases of infringement provided for in paragraph 1 above, the seizure of all infringing goods and related implements the predominant use of which has been in the commission of the offence, and documentary evidence.

4. Each Party shall ensure, at least in cases of infringement of patents, utility models, industrial designs, trademarks and rights relating to new varieties of plants, committed wilfully and on a commercial scale, that its competent authorities may initiate criminal proceedings *ex officio*, without the need for a formal complaint by the right holder whose intellectual property rights have been infringed.

Article 141
Enforcement – General

The Parties reaffirm their obligations under the TRIPS Agreement to provide for effective and appropriate means for the enforcement of intellectual property rights. Recognising that intellectual property rights are private rights, the Parties share the view that cooperation between the competent authorities and right holders is of great importance for the effective implementation of enforcement of intellectual property rights. Such cooperation may include assistance to the competent authorities in taking their legal measures against infringement of intellectual property rights.

Article 142
Assistance for Acquisition
of Intellectual Property Rights
for Small and Medium Enterprises

Each Party shall, in accordance with its laws and regulations, take appropriate measures to provide assistance to small and medium enterprises for acquisition of intellectual property rights, which may include reduction of official fees.

Article 143
Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) reviewing the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property system, such as:

(i) issues on application procedure including requirement of authentication of power of attorney;

(ii) issues on industrial designs including exception to lack of novelty, and deferment of publications;

(iii) issues on trademarks including fee system, single application for goods and/or services in several classes, and renewal of registration;

(iv) protection of new varieties of plants;

(v) issues on prevention of unfair competition including registration and use of domain names in bad faith and imitation of configuration of goods, and injunctive relief for unfair competition;

(vi) issues on adequate and effective enforcement including procedures for border measures; and

(vii) utilisation and commercialisation of intellectual property rights for small and medium enterprises;

(c) discussing the following issues:

(i) protection of partial designs;

(ii) opportunities to make observations in case of intended refusal of applications for registrations of trademarks; and

(iii) traditional knowledge, genetic resources and folklore;

(d) exchanging views on issues relating to protection of geographical indications including any strengthening of such protection as referred to in paragraph 2 of Article 134;

(e) reporting and making appropriate recommendations, as needed, to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties, including those from private sectors, with necessary expertise relevant to the issues to be discussed.

4. The Sub-Committee shall meet at such venues and times as may be agreed upon.

Article 144
Security Exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Chapter 11
Government Procurement

Article 145
Exchange of Information on Government Procurement

1. The Parties shall, subject to their respective laws and regulations, exchange information, to the extent possible in the English language and in a timely manner, on their respective laws and regulations, policies and practices on government procurement, as well as on any reforms to their existing government procurement regimes.

2. Each Party designates a contact point for the exchange of information and for providing information to suppliers of the other Party interested in procurement opportunities in particular sectors as follows:

(a) for Japan, the Ministry of Foreign Affairs; and

(b) for Thailand, the Ministry of Finance.

Article 146
Sub-Committee on Government Procurement

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Government Procurement (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

(a) discussing issues and ways to enhance cooperation for mutual benefit of the Parties in the field of government procurement;

(b) reporting the findings of the Sub-Committee to the Joint Committee; and

(c) carrying out other functions, based on the principle of mutual benefit, which may be delegated by the Joint Committee pursuant to Article 13.

3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.

4. The Sub-Committee shall meet at such venues and times as may be agreed upon.

Chapter 12
Competition

Article 147
Promotion of Fair and Free Competition by Proscribing Anti-competitive Activities

Each Party shall, in accordance with its respective laws and regulations, promote fair and free competition by proscribing anti-competitive activities in the Party, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its market.

Article 148
Cooperation on Promoting Fair and Free Competition by Proscribing Anti-competitive Activities

1. The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of promoting fair and free competition by proscribing anti-competitive activities subject to the availability of their respective resources.

2. The details and procedures of cooperation under this Article shall be specified in the Implementing Agreement.

Article 149
Non-discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate on the basis of nationality.

Article 150
Procedural Fairness

Each Party shall implement relevant administrative and judicial procedures in a fair manner to promote fair and free competition by proscribing anti-competitive activities, pursuant to its relevant laws and regulations.

Article 151
Non-Application of Article 8 and Chapter 14

Article 8 and Chapter 14 shall not apply to this Chapter.

Chapter 13
Cooperation

Article 152
Basic Principles

1. The Parties, recognising the importance of balanced and sustainable development underpinned by enhanced economic dynamism and reduced economic vulnerability, shall develop and expand cooperation under this Agreement for their mutual benefit, in order to facilitate and expand trade and investment, enhance tourism between the Parties and promote sustainable development and enhancement of better quality of life for the peoples of the Parties, the Greater Mekong Subregion and Asia as a whole.

2. The Parties, recognising vibrant transnational activities conducted by the private sectors of the Parties, and the dynamism and the geographical positions of the Parties in the Asian region, shall cooperate in such manner as to produce positive effects on the economic and social development of the emerging markets in the region.

Article 153
Fields of Cooperation

In order to enhance equal partnership based on the principles stipulated in Article 152, the Parties shall promote cooperation between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between parties, one or both of whom are entities in the Parties other than the Governments of the Parties, in the following fields:

(a) agriculture, forestry and fisheries;

(b) education and human resource development;

(c) enhancement of business environment;

(d) financial services;

(e) information and communication technology;

(f) science, technology, energy and environment;

(g) small and medium enterprises;

(h) tourism;

(i) trade and investment promotion; and

(j) other fields of cooperation as may be agreed upon.

Article 154
Areas and Forms of Cooperation

Areas and forms of cooperation under this Chapter shall be set forth in the Implementing Agreement.

Article 155
Implementation of Cooperation

1. Cooperation under this Chapter shall be conducted in accordance with the laws and regulations of each Party.

2. Cooperation under this Chapter shall be subject to the availability of the Parties' respective funds and other resources. The costs of cooperation under this Chapter shall be shared by the Parties in a manner to be agreed upon.

Article 156
Intellectual Property Rights
and Other Rights of a Proprietary Nature

1. Information of a non-proprietary nature arising from cooperation between the Governments of the Parties under this Chapter may be made available to the public by the Government of either Party.

2. The Parties, in accordance with their respective laws and regulations, and relevant international agreements to which the Parties are, or may become, parties, shall ensure adequate and effective protection and equitable distribution of intellectual property rights and any other rights of a proprietary nature resulting from cooperation between the Governments of the Parties under this Chapter. Such rights resulting from cooperation projects under this Chapter between the Governments of the Parties shall be co-owned by the Governments of the Parties, provided that the Governments of the Parties agree to the conditions of the co-ownership of such rights.

3. Each Party shall encourage, where appropriate, parties, one or both of whom are entities in the Parties other than the Governments of the Parties, to consult each other on issues regarding the ownership of any intellectual property rights or other rights of a proprietary nature resulting from cooperation under this Chapter, giving due consideration to the principle of equitable distribution of such rights.

Article 157
Sub-Committees for Each Field of Cooperation

For the purposes of the effective implementation and operation of this Chapter, Sub-Committee(s) and Special Sub-Committee(s) as a subsidiary body to the Sub-Committee(s) may be established for each field of cooperation specified in Article 153 pursuant to Article 13. The establishment, function, composition and other details of the Sub-Committee(s) and the Special Sub-Committee(s) shall be set forth in the Implementing Agreement. Each Sub-Committee shall commence its work and meet as soon as possible, in any case no later than 9 months after the date of entry into force of this Agreement.

Article 158
Non-Application of Chapter 14

The dispute settlement procedure provided for in Chapter 14 shall not apply to this Chapter. The Parties shall consult on any issues arising from the implementation and operation of this Chapter.

Chapter 14
Dispute Settlement

Article 159
Scope and Coverage

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.

2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

3. Notwithstanding paragraph 2 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

4. Paragraph 3 above shall not apply where the Parties expressly agree to the use of more than one dispute settlement procedure in respect of a particular dispute.

Article 160
Consultations

1. Each Party may request in writing consultations with the other Party with regard to any matter on the interpretation or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1 above, the other Party shall reply promptly to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to a prompt and satisfactory resolution of the matter.

Article 161
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time if the Parties agree and, at the request of either Party, be terminated at any time.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

Article 162
Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 160 may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into such consultations within 30 days after the date of receipt of the request for consultations under that Article; or

(b) if the Parties fail to resolve the dispute through such consultations under that Article within 60 days after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations, or as a result of the application by the Party complained against of measures which are in conflict with the obligations of that Party, under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

(a) the specific measures at issue; and

(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions.

3. Each Party shall within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to 3 candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party.

4. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3 above.

5. If a Party has not appointed one arbitrator pursuant to paragraph 3 above, or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 4 above, such arbitrator or such third arbitrator shall be chosen by lot within a further period of 7 days from the candidates proposed pursuant to paragraph 3 above.

6. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 163
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 162:

(a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;

(b) shall make its award in accordance with this Agreement and applicable rules of international law;

(c) shall set out, in its award, its findings of law and fact, together with the reasons therefor; and

(d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 166.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than 2 scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

4. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

5. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both descriptive part and its findings and conclusions, for the purpose of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the afore-mentioned 90 days period, it may extend that period with the consent of the Parties. However, in no case should the period from the establishment of the arbitral tribunal to the submission of the draft award to the Parties exceed 150 days. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.

6. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

7. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 164
Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 5 of Article 163 shall be kept confidential.

3. Notwithstanding paragraph 2 above, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to whom such a request is made may agree to such a request and submit such a summary, or deny the request without providing any reasons or justification.

4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

Article 165
Termination of Proceedings

The Parties may agree to terminate the proceedings of the arbitral tribunal at any time by jointly so notifying the chair of the arbitral tribunal.

Article 166
Implementation of Award

1. The Party complained against shall promptly comply with the award issued pursuant to Article 163.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as specified pursuant to paragraph 2 above, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

4. If the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as specified pursuant to paragraph 2 above, it may refer the matter to an arbitral tribunal. If the arbitral tribunal confirms that the Party complained against has failed to comply with the award within the implementation period as specified pursuant to paragraph 2 above, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

5. Suspension of the application of concessions or other obligations under paragraphs 3 and 4 above may only be implemented at least 30 days after the date of notification in accordance with those paragraphs. Such suspension shall:

(a) not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and

(d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

6. If the Party complained against considers that the requirements for the suspension of the application of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 4, or 5 above have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matters within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

7. The arbitral tribunal under this Article shall, wherever possible, be composed of the arbitrators of the original arbitral tribunal. If any of the arbitrators is not available, then that arbitrator shall be replaced by an arbitrator appointed pursuant to paragraphs 3 through 5 of Article 162. Unless the Parties agree to a different period, the arbitral tribunal under this Article shall issue its award within 60 days after the date when the matter is referred to it. The award of the arbitral tribunal under this Article shall be final and binding on the Parties.

Article 167
Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of the arbitrators, shall be borne by the Parties in equal shares.

Chapter 15
Final Provisions

Article 168
Table of Contents and Headings

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 169
General Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the tenth calendar year following the calendar year in which this Agreement enters into force and every 10 years thereafter, unless otherwise agreed by both Parties.

Article 170
Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 171
Amendment

1. This Agreement may be amended by agreement between the Parties. Such amendment shall be approved by the Parties in accordance with their respective legal procedures and shall enter into force on the date to be agreed on by the Parties.

2. If amendments relate only to the following areas, the amendments may be made by diplomatic notes exchanged between the Governments of the Parties:

(a) Annex 2;

(b) Annex 3; or

(c) Part 2 of Annex 4.

Article 172
Entry into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 173.

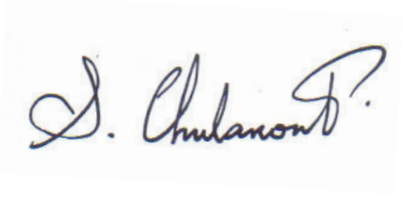
Article 173
Termination

Either Party may terminate this Agreement by giving 1 year’s advance notice in writing to the other Party.

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

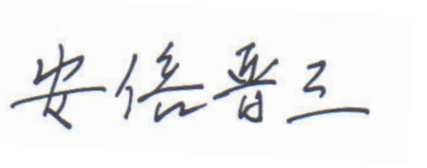
DONE at Tokyo on this third day of April 2007, in duplicate in the English language.

For the Kingdom of Thailand:



(Surayud Chulanont)
Prime Minister

For Japan:



(Shinzo Abe)
Prime Minister