AGREEMENT BETWEEN THE SOCIALIST REPUBLIC OF VIET NAM AND JAPAN FOR AN ECONOMIC PARTNERSHIP

Table of Contents

Preamble	
Chapter 1	General Provisions
Article 1	Objectives
Article 2	General Definitions
Article 3	Transparency
Article 4	Public Comment Procedures
Article 5	Administrative Procedures
Article 6	Confidential Information
Article 7	Taxation
Article 8	General and Security Exceptions
Article 9	Relation to Other Agreements
Article 10	Implementing Agreement
Article 11	Joint Committee
Article 12	Communications
Chapter 2	Trade in Goods
Article 13	Definitions
Article 14	Classification of Goods
Article 15	National Treatment
Article 16	Elimination or Reduction of Customs Duties
Article 17	Customs Valuation
Article 18	Export Subsidies
Article 19	Non-tariff Measures
Article 20	Bilateral Safeguard Measures
Article 21	Measures to Safeguard the Balance of Payments

Article 22	Relation to the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations
Chapter 3	Rules of Origin
Article 23	Definitions
Article 24	Originating Goods
Article 25	Goods Wholly Obtained or Produced
Article 26	Goods Not Wholly Obtained or Produced
Article 27	Calculation of Local Value Content
Article 28	*De Minimis*
Article 29	Accumulation
Article 30	Non-qualifying Operations
Article 31	Direct Consignment
Article 32	Packing Materials and Containers
Article 33	Accessories, Spare Parts, Tools, and Instructional or Other Information Materials
Article 34	Indirect Materials
Article 35	Identical and Interchangeable Materials
Article 36	Operational Certification Procedures
Article 37	Sub-Committee on Rules of Origin
Chapter 4	Customs Procedures
Article 38	Scope
Article 39	Definitions
Article 40	Transparency
Article 41	Customs Clearance
Article 42	Goods in Transit
Article 43	Cooperation and Exchange of Information
Article 44	Sub-Committee on Customs Procedures

Chapter 5	Sanitary and Phytosanitary Measures
Article 45	Scope
Article 46	Reaffirmation of Rights and Obligations
Article 47	Enquiry Points
Article 48	Sub-Committee on Sanitary and Phytosanitary Measures
Article 49	Non-application of Chapter 13
Chapter 6	Technical Regulations, Standards, and Conformity Assessment Procedures
Article 50	Objectives
Article 51	Scope
Article 52	Reaffirmation of Rights and Obligations
Article 53	Cooperation
Article 54	Enquiry Points
Article 55	Sub-Committee on Technical Regulation Standards, and Conformity Assessment Procedures
Article 56	Non-application of Chapter 13
Chapter 7	Trade in Services
Article 57	Scope
Article 58	Definitions
Article 59	Market Access
Article 60	National Treatment
Article 61	Additional Commitments
Article 62	Schedule of Specific Commitments
Article 63	Most-Favored-Nation Treatment
Article 64	Modification of Schedules
Article 65	Qualifications, Technical Standards, and Licensing
Article 66	Recognition

Article 67	Monopolies and Exclusive Service Suppliers
Article 68	Payments and Transfers
Article 69	Restrictions to Safeguard the Balance of Payments
Article 70	Denial of Benefits
Article 71	Sub-Committee on Trade in Services
Article 72	Review of Commitments
Article 73	Emergency Safeguard Measures
Chapter 8	Movement of Natural Persons
Article 74	Scope
Article 75	Definitions
Article 76	Specific Commitments
Article 77	Requirements and Procedures
Article 78	Sub-Committee on Movement of Natural Persons
Article 79	Further Negotiations
Chapter 9	Intellectual Property
Article 80	General Provisions
Article 81	National Treatment
Article 82	Most-Favored-Nation Treatment
Article 83	Streamlining and Harmonization of Procedural Matters
Article 84	Transparency
Article 85	Promotion of Public Awareness Concerning Protection of Intellectual Property
Article 86	Patents
Article 87	Industrial Designs
Article 88	Trademarks
Article 89	Copyright and Related Rights

Article 90	New Varieties of Plants
Article 91	Geographical Indications
Article 92	Unfair Competition
Article 93	Enforcement - Border Measures
Article 94	Enforcement - Civil Remedies
Article 95	Enforcement - Criminal Remedies
Article 96	Cooperation
Article 97	Sub-Committee on Intellectual Property
Article 98	Security Exceptions
Chapter 10	Competition
Article 99	Promotion of Competition by Addressing Anti-competitive Activities
Article 100	Definitions
Article 101	Cooperation on Promoting Competition by Addressing Anti-competitive Activities
Article 102	Technical Cooperation
Article 103	Non-application of Paragraph 3 of Article 6 and Chapter 13
Article 104	Miscellaneous
Chapter 11	Improvement of the Business Environment
Article 105	Basic Principles
Article 106	Government Procurement
Article 107	Sub-Committee on Improvement of the Business Environment
Article 108	Consulting Fora
Article 109	Liaison Office
Article 110	Non-application of Chapter 13
Chapter 12	Cooperation
Article 111	Basic Principles
Article 112	Areas and Forms of Cooperation

Article 113	Implementation
Article 114	Sub-Committee on Cooperation
Article 115	Non-application of Chapter 13
Chapter 13	Dispute Settlement
Article 116	Scope
Article 117	Consultations
Article 118	Good Offices, Conciliation, or Mediation
Article 119	Establishment of Arbitral Tribunals
Article 120	Functions of Arbitral Tribunals
Article 121	Proceedings of Arbitral Tribunals
Article 122	Termination of Proceedings
Article 123	Implementation of Award
Article 124	Expenses
Chapter 14	Final Provisions
Article 125	Table of Contents and Headings
Article 126	Annexes and Notes
Article 127	Amendment
Article 128	Entry into Force
Article 129	Termination
Annex 1	Schedules in relation to Article 16
Annex 2	Product Specific Rules
Annex 3	Operational Certification Procedures
Annex 4	Financial Services
Annex 5	Schedules of Specific Commitments in relation to Article 62
Annex 6	Lists of Most-Favored-Nation Treatment Exemptions in relation to Article 63
Annex 7	Specific Commitments for the Movement of Natural Persons

Preamble

The Socialist Republic of Viet Nam (hereinafter referred to in this Agreement as "Viet Nam") and Japan,

Recognizing that a dynamic and rapidly changing global environment brought about by globalization and technological progress presents various economic and strategic challenges and opportunities to the Parties;

Conscious of their longstanding friendship and strong economic and political ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

Believing that such a bilateral relationship will be enhanced by forging a mutually beneficial economic partnership through trade liberalization, trade facilitation, and cooperation;

Recognizing the development gap between the Parties;

Reaffirming that the economic partnership will provide a useful framework for enhanced cooperation and serve the common interests of the Parties in various fields as agreed in this Agreement and lead to the improvement of economic efficiency and the development of trade, investment, and human resources;

Recognizing that such a partnership will create a larger and new market, and enhance the attractiveness and vibrancy of their markets;

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services in Annex 1A and Annex 1B, respectively, to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

Convinced that this Agreement would open a new era for the relationship between the Parties; and

Determined to establish 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) liberalize and facilitate trade in goods and services between the Parties;

(b) ensure protection of intellectual property and promote cooperation in the field thereof;

(c) promote cooperation and coordination for the effective enforcement of competition laws in each Party;

(d) facilitate the movement of natural persons between the Parties;

(e) improve business environment in each Party;

(f) establish a framework to enhance closer cooperation in the fields agreed in this Agreement; and

(g) create effective procedures for the implementation of this Agreement and for the settlement of disputes.

Article 2
General Definitions

For the purposes of this Agreement, the term:

(a) "Area" means with respect to a Party, (i) the territory of the Party, including its territorial sea; and (ii) the exclusive economic zone and the continental shelf with respect to which the Party exercises sovereign rights or jurisdiction in accordance with international law;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

(b) "customs authority" means the competent authority that is responsible for the administration and enforcement of customs laws and regulations;

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

(d) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(e) "Harmonized System" or "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, and adopted and implemented by the Parties in their respective laws;

(f) "Parties" means Viet Nam and Japan, and "Party" means either Viet Nam or Japan; and

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

Article 3
Transparency

1. Each Party shall, in accordance with its laws and regulations, promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures, and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement.

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

3. Each Party shall, upon request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1.

4. When introducing or changing its laws, regulations, or administrative procedures that significantly affect the implementation and operation of this Agreement, each Party shall, in accordance with its laws and regulations, endeavor to provide, except in emergency situations, a reasonable interval between the time when such laws, regulations, or administrative procedures as introduced or changed 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, endeavor to adopt or maintain public comment procedures, in order to:

(a) make public in advance regulations of general application that affect any matter covered by this Agreement, when the Government adopts, amends, or repeals them; and

(b) provide a reasonable opportunity for comments by the public and give consideration to those comments before adoption, amendment, or repeal of such regulations.

Article 5
Administrative Procedures

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of a Party, the competent authorities shall, in accordance with the laws and regulations of the Party:

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party, taking into account the established standard periods of time referred to in paragraph 3; and

(b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.

2. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, endeavor to establish standards for taking administrative decisions in response to submitted applications. The competent authorities shall endeavor to:

(a) make such standards as specific as possible; and

(b) make such standards publicly available except when it would extraordinarily raise administrative difficulties for the Government of the Party.

3. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, endeavor to:

(a) establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to the submitted applications; and

(b) make publicly available such periods of time, if established.

Article 6
Confidential Information

1. 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.

2. Notwithstanding paragraph 1, the information provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party which provided the information.

3. Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 7
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 6 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 8
General and Security Exceptions

1. For the purposes of Chapters 2, 3, and 4, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 7 and 8, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

Article 9
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.

3. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

4. The provisions of the Agreement between the Socialist Republic of Viet Nam and Japan for the Liberalization, Promotion and Protection of Investment, signed at Tokyo on November 14, 2003 (hereinafter referred to in this Article as "BIT"), except its Article 20, as may be amended, are incorporated into and form part of this Agreement, *mutatis mutandis*.

5. Nothing in this Agreement shall be construed so as to derogate from any of obligations of a Party under the BIT, if such an obligation entitles the other Party to treatment more favorable than that accorded by this Agreement.

Article 10
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 11
Joint Committee

1. A Joint Committee shall be established under this Agreement.

2. The functions of the Joint Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Agreement;

(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 Implementing Regulations referred to in Part 2 of Annex 1 and Rule 11 of Annex 3; and

(ii) any necessary decisions; and

(e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

(a) shall be composed of representatives of the Governments of the Parties; and

(b) may establish, and delegate its responsibilities to, Sub-Committees.

4. The Joint Committee shall establish its rules and procedures.

5. The Joint Committee shall meet at such time and venue as may be agreed by the Parties.

Article 12
Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

Chapter 2
Trade in Goods

Article 13
Definitions

For the purposes of this Chapter, the term:

(a) "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 4 of Article 20;

(b) "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 goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied pursuant to a Party's law and 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 in Annex 1A to the WTO Agreement, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or

(iii) fees or other charges commensurate with the cost

of services rendered;

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

(d) "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) "originating good" means a good that qualifies as originating in accordance with the provisions of Chapter 3;

(f) "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in subparagraph 11(a) of Article 20;

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

(h) "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 14
Classification of Goods

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

Article 15
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 16
Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall, in accordance with its Schedule in Annex 1, eliminate or reduce its customs duties on originating goods of the other Party.

2. The Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1, in accordance with the terms and conditions set out in such Schedules.

3. In cases where its most-favored-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good in accordance with its laws, regulations, and procedures.

Article 17
Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, 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 (hereinafter referred to in this Agreement as "the Agreement on Customs Valuation") shall apply *mutatis mutandis*.

Article 18
Export Subsidies

Neither Party shall, in accordance with its obligations under the WTO Agreement, introduce or maintain any export subsidies.

Article 19
Non-tariff Measures

1. 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 transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions. Each Party shall ensure full compliance with the obligations under the WTO Agreement with a view to minimizing possible distortions to trade to the maximum extent possible.

Article 20
Bilateral Safeguard Measures

1. Each Party may apply a safeguard measure to an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as "the Agreement on Safeguards"), or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as "Agreement on Agriculture"). Any action taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture shall not be subject to Chapter 13 of this Agreement.

2. Each Party shall be free to apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if as an effect of the obligations incurred by that Party under this Agreement, including tariff concessions, or if as a result of unforeseen developments and of the effects of the obligations incurred by that Party under this Agreement, an originating good of the other Party is being imported in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the former Party that produces like or directly competitive goods in the former Party.

3. A Party shall not apply a bilateral safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

4. A Party applying a bilateral safeguard measure may:

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

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

(i) the most-favored-nation applied rate on the good in effect on the day when the bilateral safeguard measure is applied; and

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

5. (a) A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards.

(b) The investigation referred to in subparagraph (a) shall be completed within one year following its date of initiation.

6. The following conditions and limitations shall apply with regard to a bilateral safeguard measure:

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

(i) initiating an investigation referred to in

subparagraph 5(a) relating to serious injury, or threat of serious injury, and the reasons for it;

(ii) making a finding of serious injury or threat of serious injury caused by increased imports; and

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

(b) The Party giving the written notice referred to in subparagraph (a) shall provide the other Party with all pertinent information, which shall include:

(i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, the period subject to the investigation, and the date of initiation of the investigation; and

(ii) in the written notice referred to in subparagraphs (a)(ii) and (iii), the evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed safeguard measure and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, a precise description of the 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 5(a), exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 7.

(d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. A bilateral safeguard measure may be extended, provided that the conditions set out in this Article are met. The total duration of the bilateral safeguard measure, including any extensions thereof, shall not exceed four years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalize 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 which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous safeguard measure or one year, whichever is longer.

(f) Upon the termination of a bilateral safeguard measure on a good, the rate of the customs duty for that good shall be the rate which, in accordance with the Schedule of the Party applying the bilateral safeguard measure set out in Annex 1, would have been in effect had the bilateral safeguard measure not been applied.

7. (a) A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement.

(b) In seeking compensation provided for in subparagraph (a), the Parties shall hold consultations in the Joint Committee. Any proceedings arising from such consultations shall be completed within 30 days from the date on which the bilateral safeguard measure was applied.

(c) If no agreement on the compensation is reached within the time frame specified in subparagraph (b), the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend concessions of customs duties under this Agreement, which is substantially equivalent to the bilateral safeguard measure. That Party may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained. The right of suspension provided for in this subparagraph shall not be exercised for the first two years that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article.

8. (a) A Party applying a safeguard measure in connection with an importation of an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply the bilateral safeguard measure to that importation.

(b) The period of application of the bilateral safeguard measure referred to in subparagraph 6(d) shall not be interrupted by the Party's non-application of the bilateral safeguard measure in accordance with subparagraph (a).

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

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

11. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 4(a) or 4(b), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall give a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations by the Parties in the Joint Committee on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

(c) The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 5 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 6(d).

(d) Subparagraph 6(f) shall apply, *mutatis mutandis,* to the provisional bilateral safeguard measure.

(e) The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 5(a) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

12. All official communications and documentations exchanged between the Parties relating to a bilateral safeguard measure shall be in writing and shall be in the English language.

13. (a) Within 10 years after the entry into force of this Agreement, the Parties shall review this Article with a view to determining whether there is a need to maintain the bilateral safeguard mechanism.

(b) If the Parties do not agree to remove the bilateral safeguard mechanism during the review pursuant to subparagraph (a), the Parties shall thereafter conduct reviews to determine the necessity of the bilateral safeguard mechanism in the Joint Committee.

Article 21
Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, the Party may, in accordance with 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, adopt restrictive import measures.

Article 22
Relation to the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations

The Parties reaffirm that, as is provided for in Article 9 of this Agreement, any commitments of the Parties under this Chapter shall not affect the commitments of the Parties under the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations.

Chapter 3
Rules of Origin

Article 23
Definitions

For the purposes of this Chapter, the term:

(a) "exporter" means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;

(b) "factory ships of the Party" or "vessels of the Party" respectively means factory ships or 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 percent by nationals of the Parties, or by a juridical person with its head office in either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Parties, and of which at least 50 percent of the equity interest is owned by nationals or juridical persons of the Parties; and

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

(c) "generally accepted accounting principles" means the recognized consensus or substantial authoritative support in a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(d) "good" means any merchandise, product, article, or material;

(e) "identical and interchangeable materials" means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the good cannot be distinguished from one another for origin purposes by virtue of any markings;

(f) "importer" means a natural or juridical person who imports a good into the importing Party;

(g) "materials" means any matter or substance used or consumed in the production of a good, physically incorporated into a good, or used in the production of another good;

(h) "originating good" or "originating material" means a good or material that qualifies as originating in accordance with the provisions of this Chapter;

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

(j) "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 16; and

(k) "production" means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, processing, or assembling.

Article 24
Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

(a) is wholly obtained or produced entirely in the Party as provided for in Article 25;

(b) satisfies the requirements of Article 26 when using non-originating materials; or

(c) is produced entirely in the Party exclusively from originating materials of the Party,

and meets all other applicable requirements of this Chapter.

Article 25
Goods Wholly Obtained or Produced

For the purposes of paragraph (a) of Article 24, the following shall be considered as wholly obtained or produced entirely in a Party:

(a) plant and plant products grown and harvested, picked, or gathered in the Party;

Note: For the purposes of this paragraph, the term "plant" refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi, and live plants.

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

Note: For the purposes of paragraphs (b) and (c), the term "animals" covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria, and viruses.

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

(d) goods obtained from hunting, trapping, fishing, gathering, or capturing conducted in the Party;

(e) minerals and other naturally occurring substances, not included in paragraphs (a) through (d), extracted or taken from soil, waters, seabed or beneath the seabed of the Party;

(f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with its laws and regulations and international law;

Note: Nothing in this Agreement shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

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

(h) goods processed and/or made on board factory ships of the Party exclusively from products referred to in paragraph (g);

(i) articles collected in the Party which can no longer perform their original purpose or be restored or repaired, and are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes;

(j) 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;

(k) scrap and waste derived from manufacturing or processing operations, including mining, agriculture, construction, refining, incineration and sewage treatment operations, or from consumption, in the Party, and fit only for disposal or for the recovery of raw materials; and

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

Article 26
Goods Not Wholly Obtained or Produced

1. For the purposes of paragraph (b) of Article 24, a good shall qualify as an originating good of a Party if:

(a) the good has a local value content (hereinafter referred to in this Agreement as "LVC"), calculated using the formula set out in Article 27, of not less than 40 percent, and the final process of production has been performed in the Party; or

(b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification (hereinafter referred to in this Agreement as "CTC") at the 4-digit level (i.e. a change in tariff heading) of Harmonized System.

Note: For the purposes of this paragraph, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

Each Party shall permit the exporter of the good to decide whether to use subparagraph (a) or (b) when determining whether the good qualifies as an originating good of the Party.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good if it satisfies the applicable product specific rules set out in Annex 2. Where a product specific rule provides a choice of rules from an LVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Party shall permit the exporter of the good to decide which rule to use in determining whether the good qualifies as an originating good of the Party.

3. For the purposes of subparagraph 1(a) and the relevant product specific rules set out in Annex 2 which specify a certain LVC, it is required that the LVC of a good, calculated using the formula set out in Article 27, is not less than the percentage specified by the rule for the good.

4. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rules requiring that the materials used have undergone CTC, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

Article 27
Calculation of Local Value Content

1. For the purposes of calculating the LVC of a good, the following formula shall be used:

$$LVC = \frac{FOB - VNM}{FOB} \times 100\ \%$$

2. For the purposes of this Article:

(a) "FOB" is, except as provided for in paragraph 3, the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad;

(b) "LVC" is the LVC of a good, expressed as a percentage; and

(c) "VNM" is the value of non-originating materials used in the production of a good.

3. FOB referred to in subparagraph 2(a) shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the 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 a good.

4. For the purposes of paragraph 1, the value of non-originating materials used in the production of a good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation and shall include freight, insurance, and where appropriate, packing and all other costs incurred in transporting the materials 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 materials in the Party, but may exclude all the costs incurred in the Party in transporting the materials from the warehouse of the supplier of the materials to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable costs incurred in the Party.

5. For the purposes of paragraph 1, the VNM of a 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.

6. For the purposes of subparagraph 3(b) or 4(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating materials, the Agreement on Customs Valuation shall apply, *mutatis mutandis,* to domestic transactions or to the cases where there is no domestic transaction of the good or non-originating material.

Article 28
De Minimis

1. A good that does not satisfy the requirements of subparagraph 1(b) of Article 26 or an applicable CTC-based rule of origin set out in Annex 2 shall be considered as an originating good of a Party if:

(a) in the case of a good classified under Chapters 16, 19, 20, 22, 23, 28 through 49, and 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed 10 percent of the FOB;

(b) in the case of a particular good classified under Chapters 9, 18, and 21 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed 10 percent or seven percent of the FOB, as specified in Annex 2; or

(c) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required CTC does not exceed 10 percent of the total weight of the good,

provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

Note: For the purposes of this paragraph, subparagraph 2(a) of Article 27 shall apply.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable LVC-based rule of origin for the good.

Article 29
Accumulation

Originating materials of a Party used in the production of a good in the other Party shall be considered as originating materials of that other Party.

Article 30
Non-qualifying Operations

A good shall not be considered to satisfy the requirements of CTC or specific manufacturing or processing operation merely by reason of:

(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, and 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).

Article 31
Direct Consignment

1. Preferential tariff treatment shall be accorded to an originating good satisfying the requirements of this Chapter and which is consigned directly from the exporting Party to the importing Party.

2. The following shall be considered as consigned directly from the exporting Party to the importing Party:

(a) a good transported directly from the exporting Party to the importing Party; or

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

Article 32
Packing Materials and Containers

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

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

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

Article 33
Accessories, Spare Parts, Tools, and Instructional or Other Information Materials

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the accessories, spare parts, tools, and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

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

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

2. If a good is subject to an LVC-based rule of origin, the value of the accessories, spare parts, tools, and instructional or other information materials shall be taken into account as the value of the originating or non-originating materials, as the case may be, in calculating the LVC of the good.

Article 34
Indirect Materials

1. Indirect materials shall be treated as originating materials regardless of where they are produced.

2. For the purposes of this Article, the term "indirect materials" means goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies, and moulds;

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

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

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

(f) equipment, devices, and supplies used for testing or inspecting the good;

(g) catalysts and solvents; and

(h) 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.

Article 35
Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made by the use of generally accepted accounting principles of stock control applicable, or those of inventory management practiced, in the exporting Party.

Article 36
Operational Certification Procedures

The operational certification procedures, as set out in Annex 3, shall apply with respect to procedures regarding certificate of origin and related matters.

Article 37
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 "the Sub-Committee") shall be established pursuant to Article 11.

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 Annex 2 and Attachment to Annex 3, proposed by either Party; and

(iii) the Implementing Regulations referred to in Rule 11 of Annex 3;

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

(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 11.

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, upon agreement of the Parties.

4. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

Chapter 4
Customs Procedures

Article 38
Scope

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties, to promote the following aspects of the customs procedures:

(a) transparency;

(b) simplification and harmonization; and

(c) cooperation and exchange of information.

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

Article 39
Definitions

For the purposes of this Chapter, the term "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party.

Article 40
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 revised 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 such an advance notice is precluded.

3. At the request of any interested person of the Parties, each Party shall, wherever appropriate, provide, as quickly and as accurately as possible, information relating to the specific customs 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 41
Customs Clearance

1. The Parties shall apply their respective customs procedures in a predictable, consistent, and transparent manner.

2. For prompt customs clearance of goods traded between the Parties, each Party shall:

(a) endeavor to make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonize 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; and

(d) promote cooperation, wherever appropriate, between its customs authority and:

(i) other national authorities of the Party;

(ii) the trading communities of the Party; and

(iii) the customs authorities of non-Parties.

3. Each Party shall provide affected parties with easily accessible processes of administrative and judicial review of its administrative actions relating to customs matters.

Article 42
Goods in Transit

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.

Article 43
Cooperation and Exchange of Information

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

2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

3. Paragraph 3 of Article 6 shall not apply to the exchange of information under this Article.

Article 44
Sub-Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established in accordance with Article 11.

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, relating to this Chapter, to be improved for facilitating trade between the Parties; and

(d) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

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

Chapter 5
Sanitary and Phytosanitary Measures

Article 45
Scope

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to in this Chapter as "SPS") measures of the Parties under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to in this Agreement as "SPS Agreement"), that may, directly or indirectly, affect trade in goods between the Parties.

Article 46
Reaffirmation of Rights and Obligations

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

Article 47
Enquiry Points

Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding SPS measures and, if appropriate, to provide the relevant information.

Article 48
Sub-Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) exchange of information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS-related regulations and standards of the Parties, which may, directly or indirectly, affect trade in goods between the Parties;

(b) science-based consultations to identify and address specific issues that may arise from the application of SPS measures with the objective of achieving mutually acceptable solutions;

(c) consulting on cooperative efforts between the Parties in international fora in relation to SPS measures;

(d) discussing technical cooperation between the Parties on SPS measures with a view to strengthening it;

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

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

(g) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall be composed of government officials of the Parties with responsibility for SPS measures.

4. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

5. The Sub-Committee may, if necessary, establish ad hoc technical working groups as its subsidiary bodies relating to a specific area of SPS measures.

Article 49
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 6
Technical Regulations, Standards, and Conformity Assessment Procedures

Article 50
Objectives

The objectives of this Chapter are to promote trade between the Parties by:

(a) ensuring that technical regulations, standards, and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) promoting mutual understanding of the technical regulations, standards, and conformity assessment procedures in each Party;

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

(d) strengthening cooperation between the Parties at international and regional fora on the work related to standardization and conformity assessments; and

(e) providing a framework to realize these objectives.

Article 51
Scope

1. This Chapter shall apply to technical regulations, standards, and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "TBT Agreement").

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies and sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

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

Article 52
Reaffirmation of Rights and Obligations

The Parties reaffirm their rights and obligations relating to technical regulations, standards, and conformity assessment procedures under the TBT Agreement.

Article 53
Cooperation

1. For the purposes of ensuring that technical regulations, standards, and conformity assessment procedures do not create unnecessary obstacles to trade in goods between the Parties, the Parties shall, where possible, cooperate in the field of technical regulations, standards, and conformity assessment procedures.

2. The forms of cooperation pursuant to paragraph 1 may include the following:

(a) conducting joint studies and holding seminars, in order to enhance mutual understanding of technical regulations, standards, and conformity assessment procedures in each Party;

(b) exchanging government officials of the Parties for training purposes;

(c) exchanging information on technical regulations, standards, and conformity assessment procedures;

(d) contributing, where appropriate, jointly to the activities related to technical regulations, standards, and conformity assessment procedures in international and regional fora;

(e) encouraging the bodies responsible for technical regulations, standards, and conformity assessment procedures in each Party to cooperate on matters of mutual interest; and

(f) enhancing participation in the existing framework for mutual recognition established under international agreements or developed by relevant international and regional bodies.

3. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

Article 54
Enquiry Points

1. Each Party shall designate an enquiry point which shall have the responsibility to coordinate the implementation of this Chapter.

2. Each Party shall provide the other Party with the name of its designated enquiry point and the contact details of relevant officials in that organization including information on telephone, facsimile, e-mail, and other relevant details.

3. Each Party shall notify the other Party promptly of any change of its enquiry point or any amendments to the information of the relevant officials.

Article 55
Sub-Committee on Technical Regulations, Standards, and Conformity Assessment Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) coordinating cooperation pursuant to Article 53;

(b) identifying mutually agreed priority sectors for enhanced cooperation, including giving favorable consideration to any proposal made by either Party;

(c) establishing work programs in mutually agreed priority areas to facilitate the acceptance of conformity assessment results of the other Party and equivalence of technical regulations;

(d) monitoring the progress of work programs;

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

(f) facilitating technical consultations;

(g) reporting, where appropriate, its findings to the Joint Committee; and

(h) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

4. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by officials of the Governments of the Parties.

Article 56
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 7
Trade in Services

Article 57
Scope

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 to 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) measures pursuant to immigration laws and regulations;

(d) measures affecting natural persons of a Party seeking access to employment market of the other Party, nor measures regarding nationality, or residence or employment on a permanent basis; and

(e) government procurement.

3. Annex 4 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

(i) "owned" by persons of a Party or persons of a non-Party if more than 50 percent of the equity interest in it is beneficially owned either by the former persons or by the latter persons;

(ii) "controlled" by persons of a Party or persons of a non-Party if either the former persons or the latter 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;

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

Note: "measure" shall include taxation measures to the extent covered by the GATS.

(h) "measures by a Party" means any measures taken by:

(i) the central or local governments or authorities of a Party; and

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

(i) "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 the Party to be offered to the public generally; and

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

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

Article 58
Definitions

For the purposes of this Chapter, the term:

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

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

(i) the constitution, acquisition, or maintenance of a juridical person; or

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

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

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

(d) "juridical person" means any legal entity duly constituted or otherwise organized 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;

(e) "juridical person of the other Party" means a juridical person which is either:

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

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

(A) natural persons of the other Party; or

(B) juridical persons of the other Party identified under subparagraph (i);

(f) a juridical person is:

(i) "owned" by persons of a Party or persons of a non-Party if more than 50 percent of the equity interest in it is beneficially owned either by the former persons or by the latter persons;

(ii) "controlled" by persons of a Party or persons of a non-Party if either the former persons or the latter 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;

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

Note: "measure" shall include taxation measures to the extent covered by the GATS.

(h) "measures by a Party" means any measures taken by:

(i) the central or local governments or authorities of a Party; and

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

(i) "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 the Party to be offered to the public generally; and

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

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

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

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

(m) "sector" of a service means:

(i) with reference to a specific commitment, one or more, or all, sub-sectors 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 sub-sectors;

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

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

(p) "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;

(q) "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;

(r) "service supplier" means any person that supplies a service;

Note: Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this 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 of a Party where the service is supplied.

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

(t) "the 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;

(u) "trade in services" means the supply of services:

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

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

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

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

(v) "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 59
Market Access

1. With respect to market access through the modes of supply defined in paragraph (u) of Article 58, each Party shall accord services and service suppliers of the other Party treatment no less favorable 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 (u)(i) of Article 58 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 (u)(iii) of Article 58, 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 60
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 favorable 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 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 favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. A Party shall not invoke the preceding paragraphs under Chapter 13 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

Article 61
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 59 and 60, 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 62
Schedule of Specific Commitments

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 59, 60, and 61. With respect to sectors or sub-sectors where such specific commitments are undertaken, the Party's 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.

2. Measures inconsistent with both Articles 59 and 60 shall be inscribed in the column relating to Article 59. In this case the inscription will be considered to provide a condition or qualification to Article 60 as well.

Article 63
Most-Favored-Nation Treatment

1. Unless otherwise specified in Annex 6, each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any non-Party.

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

3. If, after this Agreement enters into force, a Party concludes or amends an agreement of the type referred to in paragraph 2 with a non-Party, it shall provide the other Party an opportunity to consult on the possibility of according treatment no less favorable than that granted to services and service suppliers of the non-Party under that agreement to like services and service suppliers of that other Party.

Article 64
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 127. In the negotiations for such modification or withdrawal, the Parties shall endeavor, in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favorable 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 65
Qualifications, Technical Standards, and Licensing

With a view to ensuring that measures by a Party relating to qualification requirements and procedures, technical standards, and licensing requirements of service suppliers of the other Party do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure that such measures:

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

(b) are not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

Article 66
Recognition

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of service suppliers of the other Party.

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

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licenses or certifications granted in the non-Party:

(a) nothing in Article 63 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the other Party;

(b) the Party shall accord the other Party an adequate opportunity to negotiate the accession of that other Party to such an agreement or arrangement or to negotiate comparable ones with it between the Parties; and

(c) where the Party accords such recognition unilaterally, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the other Party should also be recognized.

Article 67
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 commitments under this Chapter.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, 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 the Area of the Party in a manner inconsistent with such commitments.

3. If a Party has a 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, 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) authorizes or establishes a small number of service suppliers; and

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

Article 68
Payments and Transfers

1. Except under the circumstances envisaged in Article 69, 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 under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 69, or at the request of the International Monetary Fund.

Article 69
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 on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressure on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

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

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(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; and

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

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

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

Article 70
Denial of Benefits

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

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

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

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier that is a juridical person, if the denying Party establishes that the juridical person is not a service supplier of the other Party.

Article 71
Sub-Committee on Trade in Services

1. For the purposes of effective implementation and operation of this Chapter, the Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations;

(b) reviewing and monitoring the implementation and operation of this Chapter;

(c) discussing any issues related to this Chapter;

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

(e) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall be:

(a) 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; and

(b) co-chaired by officials of the Governments of the Parties.

4. The working group on financial services (hereinafter referred to in this Article as "the Working Group") shall be established under the Sub-Committee. The details and procedures of the Working Group shall be specified in Annex 4.

Article 72
Review of Commitments

1. The Parties shall review commitments on trade in services within five years from the date of entry into force of this Agreement, with the aim of improving the overall level of commitments undertaken by the Parties under this Chapter.

2. In reviewing their commitments pursuant to paragraph 1, the Parties shall take into account the principles in paragraph 1 of Article IV and paragraph 2 of Article XIX of the GATS.

Article 73
Emergency Safeguard Measures

In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. In such consultations, the Parties shall take into account the circumstances of the particular case and the result of the multilateral negotiations pursuant to Article X of the GATS if the said negotiations have been concluded at the time of such consultations.

Chapter 8
Movement of Natural Persons

Article 74
Scope

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 Annex 7.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to employment market of the other Party, nor measures regarding nationality, or 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 specific commitments under Article 76.

Note: The sole fact of requiring a visa for natural persons of the other Party and not for those of certain non-Parties shall not be regarded as nullifying or impairing benefits under specific commitments under Article 76.

Article 75
Definitions

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

Article 76
Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter including the terms of the categories in Annex 7, provided that the natural persons comply with the laws and regulations of the former Party related to movement of natural persons applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.

2. Neither Party shall impose or maintain any limitations on the number of granting entry and temporary stay under paragraph 1, unless otherwise specified in Annex 7.

Article 77
Requirements and Procedures

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 Article 76, information on requirements and procedures necessary for an effective application by natural persons of the other Party for the grant of entry into, initial temporary stay in or renewal thereof, and, where applicable, permission to work in, and a change of status of temporary stay in, the former Party.

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

3. Each Party shall endeavor 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 that affect the effective application by natural persons of the other Party for the grant of entry into, initial temporary stay in or renewal thereof, and, where applicable, permission to work in, and a change of status of temporary stay in, the former Party.

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

5. Each Party shall endeavor, 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.

Article 78
Sub-Committee on Movement of Natural Persons

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

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

(b) discussing any issues related to this Chapter, including the subjects of further negotiations referred to in Annex 7;

(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 in accordance with Article 11.

Article 79
Further Negotiations

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

Chapter 9
Intellectual Property

Article 80
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 adequate and effective 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. The Parties, recognizing the growing importance of protection of intellectual property in further promoting trade and investment between the Parties, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property.

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

(a) that are subject of Articles 86 through 92; and/or

(b) that are under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement") and/or the relevant international agreements referred to in the TRIPS Agreement.

4. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties.

Article 81
National Treatment

Each Party shall accord to nationals of the other Party treatment no less favorable 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 Articles 81 and 82, "nationals" shall have the same meaning as in the TRIPS Agreement, and "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 82
Most-Favored-Nation Treatment

Each Party shall accord to nationals of the other Party treatment no less favorable 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 83
Streamlining and Harmonization 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. Neither Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney, and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks.

3. Notwithstanding paragraph 2, a Party may require:

(a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the change in ownership of a patent or a registration of utility models, industrial designs, or trademarks; and

(b) the submission of evidence if there is a reasonable doubt as to the authenticity of the signature or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for doubting the authenticity of the signature or other means of self-identification.

4. Neither Party may require the certification, by any party other than the applicant or his or her representatives, of the accuracy of a translation of an earlier application whose priority is claimed.

5. Each Party shall introduce and implement a system in which a power of attorney for application procedures or other administrative procedures on patents, utility models, industrial designs, or trademarks before the competent authority of the Party may relate to one or more applications and/or grants or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or grants or registrations of that person.

6. The applications for and grants of patents and publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended. The applications for registrations of, and registrations of, trademarks for goods and services and publication thereof shall be classified in accordance with the international classification system of goods and services established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised and amended.

7. Each Party shall endeavor to improve patent attorney system with a view to further facilitating acquisition and utilization of rights to patents, utility models, industrial designs and trademarks.

Article 84
Transparency

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

(a) take appropriate measures to publish information at least on applications for and grants of patents, registrations of utility models and industrial designs, registrations of trademarks and application therefor, and registration of new varieties of plants and application therefor;

(b) endeavor to make available to the interested parties official information contained in the dossiers in connection with matters provided for in paragraph (a);

(c) endeavor to make easily available to the public information on intellectual property protection system, including information on its efforts to provide effective enforcement of intellectual property rights.

Article 85
Promotion of Public Awareness Concerning Protection of Intellectual Property

The Parties shall take appropriate 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 86
Patents

1. Each Party shall ensure that any application for a patent is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program.

2. The provisions of paragraph 1 shall not prejudice the patentability of computer programs as such which shall be determined in accordance with the laws and regulations of each Party.

3. Each Party shall ensure that, if an invention claimed in the application for a patent is being worked by any person other than the applicant for the patent in that person's business after the publication of the application, that person or the applicant for the patent may file a request to the competent authority of the Party that the application be examined in advance of other applications, in accordance with its laws and regulations. In this case, the competent authority of the Party may require the applicant for the patent or the person who filed the request to furnish a proof that the invention is being worked, a result of prior art search in relation to the application, or a copy of the final decision by the administrative authority for patents of the other Party or of a non-Party on an application, which the applicant has filed in the other Party or in the non-Party, of an invention that is the same or substantially the same with the invention claimed in the application at issue. Where such a request has been filed, the competent authority of the Party shall take the request into consideration and endeavor to examine the application in advance of other applications, where appropriate.

4. Each Party shall ensure that a patent owner may file a request for correction of the description, the scope of the claims, or the drawings, that are attached to the application, to the administrative authority for patents for the purpose of restricting the scope of the claims.

Article 87
Industrial Designs

Each Party shall ensure adequate and effective protection of industrial designs in accordance with Articles 25 and 26 of the TRIPS Agreement.

Article 88
Trademarks

Each Party shall ensure adequate and effective protection of trademarks in accordance with Articles 15 through 21 of the TRIPS Agreement.

Article 89
Copyright and Related Rights

1. Each Party shall ensure effective protection of copyright and related rights in accordance with its laws and regulations and international agreements to which it is a party.

2. Each Party shall ensure that its laws and regulations be implemented with appropriate legal remedies in order to protect copyright and related rights in the digital environment.

3. Each Party shall, in accordance with its laws and regulations, take appropriate measures to promote the development of the collective management organizations for copyright and related rights in that Party.

Article 90
New Varieties of Plants

Each Party recognizes the importance of providing a system of protection of new varieties of plants and shall endeavor to provide for the protection of all plant genera and species as early as practicable in accordance with the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

Article 91
Geographical Indications

Each Party shall ensure adequate and effective protection of geographical indications in accordance with its laws and regulations and with the TRIPS Agreement.

Article 92
Unfair Competition

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

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following acts, in particular, shall be prohibited as acts of unfair competition:

(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;

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

(d) acts of acquiring or holding the right to use or using a domain name identical with or confusingly similar to a protected trade name and trademark of another person, for the purposes specified in the laws and regulations of each Party, such as with the intention to gain an unfair profit or the intention to cause damage to that other person.

4. 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.

5. Each Party shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Party shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request suspension or prevention of the act, destruction of the goods which constitute the act, removal of materials and implements used for the act, or damages to compensate for the injury which result from the act, unless otherwise provided for in the laws and regulations of the Party.

Article 93
Enforcement - Border Measures

Each Party shall ensure adequate and effective enforcement of border measures in accordance with Articles 51 through 60 of the TRIPS Agreement.

Article 94
Enforcement - Civil Remedies

1. 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.

2. In cases where it is extremely difficult for the right holder of intellectual property to prove the actual economic harm due to the nature of facts concerned, each Party shall ensure, to the extent possible in accordance with its laws and regulations, that its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them.

3. Each Party shall endeavor, as necessary, to take necessary measures to improve its judicial system with a view to providing effective civil remedies against infringement of intellectual property rights.

Article 95
Enforcement - Criminal Remedies

Each Party shall ensure that criminal procedures and penalties be applied in accordance with Article 61 of the TRIPS Agreement.

Article 96
Cooperation

1. The Parties shall cooperate in the field of intellectual property in accordance with paragraph 2 of Article 80.

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

3. Costs of cooperation under this Article shall be borne in as equitable a manner as possible.

4. Chapter 13 shall not apply to this Article.

Article 97
Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) reviewing and monitoring 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 protection system, such as:

(i) issues on patents;

(ii) issues on industrial designs;

(iii) issues on trademarks;

(iv) issues on liability of internet service providers;

(v) issues on unfair competition;

(vi) issues on border measures;

(vii) issues on geographical indications; and

(viii) issues on administrative remedies;

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

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

2. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by officials of the Governments.

Article 98
Security Exceptions

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

Chapter 10
Competition

Article 99
Promotion of Competition
by Addressing Anti-competitive Activities

Each Party shall, in accordance with its laws and regulations, promote competition by addressing anti-competitive activities in order to facilitate the efficient functioning of its market. Any measure taken for such purposes shall be taken in conformity with the principles of transparency, non-discrimination, and procedural fairness.

Article 100
Definitions

For the purposes of this Chapter, the term:

(a) "anti-competitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition law of either Party; and

(b) "competition law" means:

(i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) and its implementing regulations as well as any amendments thereto; and

(ii) for Viet Nam, the Competition Law (Law No. 27/2004/QH11) and its implementing regulations as well as any amendments thereto.

Article 101
Cooperation on Promoting Competition by Addressing Anti-competitive Activities

The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of promoting competition by addressing anti-competitive activities subject to their respective available resources, with a view to contributing to the effective enforcement of the competition law of each Party and to avoiding or lessening the possibility of conflicts between the Governments of the Parties in all matters pertaining to the application of the competition law of each Party. Such cooperation may take the form of exchange of information, notification and coordination of enforcement activities, and consultation.

Article 102
Technical Cooperation

The Parties agree that it is in their common interest for the competition authorities of the Parties to work together in technical cooperation activities related to strengthening of competition policy and implementation of the competition law of each Party.

Article 103
Non-application of Paragraph 3 of Article 6 and Chapter 13

Paragraph 3 of Article 6 and Chapter 13 shall not apply to this Chapter.

Article 104
Miscellaneous

1. Detailed arrangements to implement this Chapter may be made between the competition authorities of the Parties.

2. Nothing in this Chapter shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements.

3. Nothing in this Chapter shall be construed to prejudice the policy or legal position of either Party regarding any issues related to jurisdiction.

4. Nothing in this Chapter shall be construed to affect the rights and obligations of either Party under other international agreements or arrangements or under its laws.

Chapter 11
Improvement of the Business Environment

Article 105
Basic Principles

Each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the persons of the other Party conducting their business activities in the former Party.

Article 106
Government Procurement

Recognizing the importance of enhancing efficiency of its government procurement in improving the business environment in the Party, each Party, subject to its laws and regulations, policies, and practices on government procurement shall endeavor to:

(a) enhance transparency of the measures regarding government procurement; and

(b) implement in a fair and effective manner the measures regarding government procurement.

Article 107
Sub-Committee on Improvement of the Business Environment

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) reviewing findings reported by a Liaison Office on Improvement of the Business Environment (hereinafter referred to in this Chapter as the "Liaison Office") to be designated by each Party under Article 109;

(b) addressing and seeking ways to resolve issues related to the business environment on its own initiative or based on the findings reported by the Liaison Office;

(c) reporting its findings and making recommendations, including those on measures that should be taken by the Parties, to the Parties;

(d) reviewing, where appropriate, the measures taken by the Parties in relation to such recommendations referred to in subparagraph (c);

(e) making available to the public, in an appropriate manner, the recommendations referred to in subparagraph (c) and the results of the review referred to in subparagraph (d);

(f) reporting promptly the recommendations referred to in subparagraph (c) and other findings in relation to the implementation and operation of this Chapter to the Joint Committee;

(g) cooperating, in an appropriate manner, with other Sub-Committees established under this Agreement, with a view to avoiding unnecessary duplication of works. The forms of such cooperation may include:

(i) informing the results of consideration to such other Sub-Committees;

(ii) seeking opinions from such other Sub-Committees;

(iii) inviting to the Sub-Committee the members of such other Sub-Committees; and

(iv) where appropriate, transferring the relevant issues to such other Sub-Committees.

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

4. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

Article 108
Consulting Fora

Where appropriate, the Parties may make use of existing consulting fora between the Parties for improvement of the business environment in the Parties in connection with the matters covered by this Chapter.

Article 109
Liaison Office

1. Each Party shall designate and maintain the Liaison Office in the Party. The designation of the Liaison Office by each Party shall be notified to the other Party.

2. The functions of the Liaison Office in each Party shall be:

(a) receiving complaints, inquiries, and/or requests for consultations from the persons of the other Party with regard to the laws, regulations, and other measures of the former Party which may adversely affect the business activities of such persons of the other Party;

(b) transmitting the complaints, inquiries, and/or requests for consultations referred to in subparagraph (a) to relevant authorities of the former Party;

(c) transmitting responses from the relevant authorities of the former Party to the persons that filed the complaints, made inquiries, and/or made request for consultations;

(d) providing the persons referred to in subparagraph (a) with necessary information and advice in collaboration with relevant authorities of the former Party; and

(e) reporting its findings, with regard to the exercise of its functions referred to in subparagraphs (a) through (d), to the Joint Committee, relevant Sub-Committees, and/or the existing consulting fora referred to in Article 108.

3. The Liaison Office in each Party shall endeavor to respond within a reasonable period of time to the persons that filed complaints, made inquiries, and/or made requests for consultations.

4. Communications between the Liaison Office in a Party and the persons of the other Party referred to in paragraph 2 may be conducted through an authority or an organization designated by the Government of the latter Party.

5. Paragraphs 2 through 4 shall not be construed as to prevent or restrict any contacts made by the persons of a Party directly to relevant authorities of the other Party.

Article 110
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 12
Cooperation

Article 111
Basic Principles

The Parties shall, in accordance with their respective applicable laws and regulations, promote cooperation under this Agreement for their mutual benefits in order to liberalize and facilitate trade and investment between the Parties and to promote the well-being of the peoples of the Parties. For this purpose, the Parties shall cooperate between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between the parties, one or both of whom are entities other than the Governments of the Parties, in the following fields:

(a) agriculture, forestry, and fisheries;

(b) trade and investment promotion;

(c) small and medium enterprises;

(d) human resource management and development;

(e) tourism;

(f) information and communications technology;

(g) environment;

(h) transportation; and

(i) other fields to be mutually agreed by the Parties.

Article 112
Areas and Forms of Cooperation

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

Article 113
Implementation

1. The implementation of cooperation under this Chapter shall be subject to the availability of appropriated funds and other resources, and the applicable laws and regulations of each Party.

2. Costs of cooperation under this Chapter shall be borne in as equitable a manner as possible between the Parties through efficient and effective utilization of resources.

Article 114
Sub-Committee on Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Cooperation (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

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

(a) exchanging views and information on cooperation in each of the fields of cooperation referred to in Article 111 and identifying ways of further cooperation between the Parties;

(b) monitoring, reviewing, and discussing issues concerning the effective implementation and operation of this Chapter;

(c) reporting the findings and actions taken by the Sub-Committee to the Joint Committee regarding issues relating to the implementation and operation of this Chapter;

(d) supervising the functions and activities of the working groups to be established pursuant to paragraph 6;

(e) establishing its own rules and procedures;

(f) discussing any issues related to this Chapter; and

(g) performing other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall respect existing consultation mechanisms between the Parties for Official Development Assistance and other existing cooperation schemes and, as appropriate, share information with such mechanisms to ensure effective and efficient implementation of cooperative activities.

4. The Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties as resource persons with the necessary expertise relevant to the issues to be addressed.

5. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.

6. The Sub-Committee may establish a working group under the Sub-Committee for each of the fields of cooperation referred to in Article 111. The functions, composition, and other details of the working groups may be set forth in the Implementing Agreement.

Article 115
Non-application of Chapter 13

Chapter 13 shall not apply to this Chapter.

Chapter 13
Dispute Settlement

Article 116
Scope

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, 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. For the purposes of paragraphs 2 and 3, a dispute settlement procedure shall be deemed to have been initiated when a Party has requested the establishment of, or referred a dispute to, an arbitral tribunal or a dispute settlement panel, in accordance with this Chapter or any other international agreement to which the Parties are parties.

Article 117
Consultations

1. Either Party may make a request in writing for consultations to the other Party concerning any matter on the interpretation or application of this Agreement.

2. Any request for consultations shall be submitted in writing, containing the identification of the specific measures at issue and indication of the factual and legal basis (including, if applicable, the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint.

3. When a Party makes a request for consultations pursuant to paragraph 1, the other Party shall reply 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 reaching a prompt and mutually satisfactory resolution of the matter. In case of consultations regarding perishable goods, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 118
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 by agreement of the Parties and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitral tribunal provided for in this Chapter are in progress.

Article 119
Establishment of Arbitral Tribunals

1. The complaining Party that made a request for consultations under Article 117 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, or within 15 days in case of consultations regarding perishable goods, after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in case of consultations regarding perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

(a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and

(b) the factual basis for the complaint.

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 three 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, nor have dealt with the dispute in any capacity.

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.

5. If either Party has not appointed an arbitrator pursuant to paragraph 3, or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 4, the Director-General of the World Trade Organization shall immediately be requested to make the necessary appointments. In the event that the Director-General is a national of either Party, the Deputy Director-General or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.

6. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

7. An arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 120
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 119:

(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 123.

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 the 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 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 two 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.

Article 121
Proceedings of Arbitral Tribunals

1. The rules and procedures as set out in this Article shall apply to the proceedings of an arbitral tribunal.

2. The Parties, in consultation with the arbitral tribunal, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.

3. After consulting the Parties, the arbitral tribunal shall as soon as practicable and whenever possible within seven days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The timetable fixed for the arbitral tribunal shall include precise deadlines for written submissions by the Parties. Modifications to such timetable may be made by the agreement of the Parties in consultation with the arbitral tribunal.

4. The venue for the arbitral tribunal proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitral tribunal proceedings to be held in the capital of the Party complained against.

5. The arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

6. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information provided or written submissions made 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.

7. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

8. Notwithstanding paragraph 7, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information provided and written submissions made by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or made written submissions designated to be confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

9. 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.

10. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 day period, it may extend that period with the consent of the Parties. 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.

11. The arbitral tribunal shall issue its award within 30 days after the date of submission of the draft award.

12. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

13. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 122
Termination of Proceedings

The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties.

Article 123
Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 121.

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 in which to implement the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal which then determines the reasonable implementation period.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, 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 satisfactory 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 to the Party complained against 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 determined pursuant to paragraph 2, it may refer the matter to an arbitral tribunal to confirm the failure.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, 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 to the Party complained against of concessions or other obligations under this Agreement.

6. The suspension of the application of concessions or other obligations under this Agreement pursuant to paragraphs 3 and 5 may only be implemented at least 30 days after the date of the 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 the arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the 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 under this Agreement in such sector or sectors.

7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 6 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 matter 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.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3 through 5 of Article 119. Unless the Parties agree to a different period, the arbitral tribunal established for the purposes of this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 124
Expenses

Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless otherwise agreed by the Parties.

Chapter 14
Final Provisions

Article 125
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 126
Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 127
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 by the Parties.

2. Notwithstanding paragraph 1, amendments relating only to the following may be made by diplomatic notes exchanged between the Governments of the Parties:

(a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change on the rates of customs duty to be applied by a Party to the originating goods of the other Party in accordance with Annex 1;

(b) Annex 2; or

(c) Attachment to Annex 3.

Article 128
Entry into Force

This Agreement shall enter into force on the first day of the second month following the month in 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 pursuant to Article 129.

Article 129
Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Tokyo on this twenty-fifth day of December in the year 2008 in duplicate in the English language.

For the Socialist Republic of Viet Nam

Vu Huy Hoang
Minister of Industry and Trade

For Japan

中曽根弘文

Hirofumi Nakasone
Minister for Foreign Affairs