PHẦN VĂN BẢN KHÁC

BỘ NGOẠI GIAO

Thông báo số 50/2016/TB-LPQT ngày 12 tháng 8 năm 2016 về việc điều ước quốc tế có hiệu lực

(Tiếp theo Công báo số 887 + 888)

b) exchanging officials of the Parties for training purposes;

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

d) strengthening cooperation in international fora, including international bodies related to standardisation and conformity assessment and the WTO Committee on Technical Barriers to Trade, in areas of mutual interest;

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

f) providing scientific and technical cooperation in order to improve the quality of technical regulations; and

g) making efficient use of regulatory resources.

3. The implementation of paragraph 2 of this Article shall be subject to the availability of appropriated funds and the respective laws and regulations of each Party.

4. Cooperation on issues relating to technical barriers to trade may be undertaken, *inter alia*, through dialogue in appropriate channels, joint projects and technical assistance.

5. The Parties may conduct joint projects, technical assistance and cooperation on standards, technical regulations and conformity assessment procedures in selected areas, as mutually agreed.

6. The Parties undertake to exchange views on matters of market surveillance and enforcement activities in the field thereof relating to technical barriers to trade.

7. Upon request, a Party shall give appropriate consideration to proposals that the other Party makes for cooperation under this Chapter.

8. In order to promote cooperation in the framework of this Chapter, the Parties may conclude *ad hoc* arrangements on the matters covered therein.

ARTICLE 6.9

Competent Authorities and Contact Points

1. The Parties shall designate competent authorities and contact points and exchange information containing the names of the designated competent authorities and contact points, contact details of relevant officials in such competent authorities and contact points, including telephone and facsimile numbers, email addresses and other relevant details.

2. The Parties shall promptly notify each other of any change to their competent authorities and contact points or amendment to the information of the relevant officials.

3. The contact points' functions shall include the following:

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

   b) referring the enquiries from a Party to the appropriate regulatory authorities.

4. The competent authorities' functions shall include:

   a) monitoring the implementation of this Chapter;

   b) facilitating cooperation activities, as appropriate, in accordance with Article 6.8 of this Agreement;

c) promptly addressing any issue that a Party raises related to the preparation, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures;

d) facilitating consultations on any matter arising under this Chapter upon request of a Party;

e) taking any other action that the Parties consider will assist them in implementing this Chapter; and

f) carrying out other functions as may be delegated by the Joint Committee.

CHAPTER 7
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 7.1

Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties by:

a) seeking to resolve issues relating to sanitary and phytosanitary measures while protecting human, animal or plant life or health in the territories of the Parties;

b) strengthening cooperation between the Parties and among their competent authorities including in the development and application of sanitary and phytosanitary measures as defined in the SPS Agreement; and

c) facilitating information exchange in the field of sanitary and phytosanitary measures and enhancing the knowledge and understanding of each Party's regulatory system.

ARTICLE 7.2

Scope

This Chapter shall apply to sanitary and phytosanitary measures of the Parties that may, directly or indirectly, affect trade between the Parties.

ARTICLE 7.3

Definitions

For the purposes of this Chapter:

a) the definitions set out in Annex A to the SPS Agreement shall apply, *mutatis mutandis*; and

b) the relevant definitions developed by the international organisations: the Codex Alimentarius Commission, the World Organization for Animal Health (hereinafter referred to as "OIE") and international and regional organisations operating within the framework of the International Plant Protection Convention (hereinafter referred to as "IPPC") shall apply in the implementation of this Chapter, *mutatis mutandis*.

ARTICLE 7.4

Incorporation of the SPS Agreement

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is incorporated into and form part of this Agreement, *mutatis mutandis*.

ARTICLE 7.5

Equivalence

1. The Parties recognise that equivalence is an important means to facilitate trade.

2. The Parties may recognise equivalence of a measure, a group of measures or a system to the extent feasible and appropriate.

ARTICLE 7.6

Adaptation to Regional Conditions

1. The Parties recognise the concept of adaptation to regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, as an important means to facilitate trade.

2. When determining such areas, the Parties shall consider factors such as information of the Parties confirming the status of pest- or disease-free areas and areas of low pest or disease prevalence, the results of an audit, inspection monitoring, information provided by OIE and IPPC and other factors.

ARTICLE 7.7

Audit and Inspections

1. Each Party may carry out an audit and/or inspection in order to ensure the safety of the products (goods).

2. The Parties agree to enhance further their cooperation in the field of audits and inspections.

3. In undertaking audits and/or inspections, each Party shall take into account relevant international standards, guidelines and recommendations.

4. The auditing or inspecting Party shall provide the audited or inspected Party the opportunities to comment on the findings of the audits and/or inspections.

5. Costs incurred by the auditing or inspecting Party shall be borne by the auditing or inspecting Party, unless both Parties agree otherwise.

ARTICLE 7.8

Documents Confirming Safety

1. Where a document is required to confirm safety of the products (goods) traded between the Parties, the exporting Party shall ensure compliance with the requirements of the importing Party. The importing Party shall ensure the

requirements of the documents for confirming safety of the products (goods) traded between the Parties are applied only to the extent necessary to protect human, animal or plant life or health.

2. The Parties shall take into account relevant international standards, guidelines and recommendations, when developing the documents for confirming safety of the products (goods), as appropriate.

3. The Parties may agree to develop bilateral documents for confirming safety of specific product (good) or groups of products (goods) traded between the Parties.

4. The Parties shall promote the use of electronic technologies in the documents for confirming safety of the products (goods) in order to facilitate trade.

ARTICLE 7.9

Emergency Measures

1. Where a Party adopts emergency measures necessary to protect human, animal or plant life or health, such Party shall as soon as possible notify such measures to the other Party. The Party that adopted the emergency measures shall take into consideration relevant information provided by the other Party.

2. Upon request of either Party, consultations of the relevant competent authorities regarding the emergency measures shall be held as soon as possible unless otherwise agreed by the Parties.

ARTICLE 7.10

Contact Points and Information Exchange

1. The Parties shall notify each other of the contact points for the provision of information in accordance with this Chapter and of their designated competent authorities responsible for matters covered by this Chapter and the areas of

responsibility of such competent authorities.

2. The Parties shall inform each other of any change to their contact points or any significant change in the structure or competence of their competent authorities.

3. The Parties, through their contact points, shall provide each other in a timely manner with a written notification of:

   a) any significant food safety issue or change in animal or plant health, disease or pest status in their territories; and

   b) any change to the legal frameworks or other sanitary or phytosanitary measures.

4. The Parties, through their contact points, shall inform each other of systematic or significant cases of non-compliance of sanitary and phytosanitary measures and exchange relevant documents which confirm this non-compliance.

ARTICLE 7.11

Cooperation

1. The Parties agree to cooperate in order to facilitate the implementation of this Chapter.

2. The Parties shall explore opportunities for further cooperation, collaboration and information exchange on sanitary and phytosanitary matters of mutual interest consistent with the provisions of this Chapter. Such opportunities may include trade facilitation initiatives and technical assistance.

3. The Parties shall aim to work together in international fora, including international organisations, and in areas of mutual interest.

4. In order to promote cooperation within the framework of this Chapter, the Parties may conclude *ad hoc* arrangements on sanitary and phytosanitary measures.

ARTICLE 7.12

Consultations

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with the other Party, it may, through the relevant contact points, request consultations with the aim of resolving the matter.

2. A Party shall consider to hold consultations under the context of this Chapter, upon request of the other Party, with the aim of resolving matters arising under this Chapter.

3. In case either Party considers that the matter cannot be resolved through consultations in accordance with this Article, such Party shall have the right to seek resolution through the dispute settlement mechanism provided for in Chapter 14 (Dispute Settlement) of this Agreement.

CHAPTER 8
TRADE IN SERVICES, INVESTMENT AND MOVEMENT OF NATURAL PERSONS

SECTION I. HORIZONTAL PROVISIONS

ARTICLE 8.1

Objectives

The objectives of this Chapter are to encourage efficiency, competition and economic growth of the Parties to this Chapter by facilitating the expansion of trade in services, establishment, investment and movement of natural persons of the Parties to this Chapter on the basis of a transparent and stable legal framework, while recognising the right of the Parties to this Chapter to regulate in order to meet national policy objectives.

ARTICLE 8.2

Scope

1. This Chapter shall apply only between Viet Nam and the Russian Federation, hereinafter referred to in this Chapter as the "Parties to this Chapter".

2. This Chapter shall apply to measures by the Parties to this Chapter affecting trade in services. establishment, investments and movement of natural persons.

3. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights. except the measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, computer reservation system services as provided for in paragraph 6 of the Annex on Air Transport Services of GATS. The

definitions of paragraph 6 of the Annex on Air Transport Services of GATS are incorporated into and form part of this Chapter.

4. This Chapter shall not apply to:

   a) government procurement, which is subject to Chapter 10 of this Agreement;

   b) measures affecting natural persons seeking access to the employment market of a Party to this Chapter; or

   c) measures regarding citizenship, residence or employment on a permanent basis.

5. This Chapter shall not prevent a Party to this Chapter from applying measures to regulate the entry of natural persons of the other Party to this Chapter into or their temporary stay in its territory, including those 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 to this Chapter under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of a Party to this Chapter and not for those of any other third country shall not be regarded as nullifying or impairing benefits under the commitments made in this Chapter.

ARTICLE 8.3

Definitions

For the purposes of this Chapter:

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

   i. from the territory of a Party to this Chapter into the territory of the other Party to this Chapter;

ii. in the territory of a Party to this Chapter to the service consumer of the other Party to this Chapter;

b) **"supply of a service"** includes production, distribution, marketing, sale and delivery of a service;

c) **"services"** includes any service in any sector except services supplied neither on a commercial basis nor in competition with one or more service suppliers;

d) **"service supplier"** means any person that supplies a service;

e) **"service consumer"** means any person that receives or uses a service;

f) **"person"** means either a natural person or a juridical person;

g) **"natural person of a Party to this Chapter"** means a natural person who, under the applicable laws and regulations of that Party to this Chapter, is a national of such Party to this Chapter;

h) **"juridical person"** means any legal entity duly constituted or otherwise organised under applicable laws and regulations;

A juridical person is:

"owned" by persons of a Party to this Chapter if more than 50 percent of the equity interest in it is beneficially owned by persons of such Party to this Chapter;

"controlled" by persons of a Party to this Chapter if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

i) **"juridical person of a Party to this Chapter"** means a juridical person which is constituted or otherwise organised under the laws and regulations of such Party;

j) **"economic integration agreements"** means international agreements complying with the requirements of Articles V and/or V*bis* of GATS;

k) **"measure"** means any measure by a Party to this Chapter, whether in form of a law, regulation, rule, procedure, decision, administrative action or any other form;

l) **"measure by a Party to this Chapter"** means measures taken by:

i. central, regional or local governments and authorities of that Party to this Chapter; and

ii. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of that Party to this Chapter.

m) **"measures by Parties to this Chapter affecting trade in services"** include 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 Parties to this Chapter to be offered to the public generally.

n) **"measures by Parties to this Chapter affecting establishment, commercial presence and activities"** include measures in respect of establishment, commercial presence of juridical persons of a Party to this Chapter in the territory of the other Party to this Chapter or activities thereof;

o) **"establishment"** means:

i. the establishment (or constitution) and/or acquisition of a juridical person (participation in the capital of an existing juridical person) of any legal form and ownership provided for in

laws and regulations of a Party to this Chapter within the territory of which this person is being established, constituted or acquired;

ii. the acquisition of control over a juridical person of a Party to this Chapter by legally determining, directly or indirectly, the decisions taken by such juridical person, including through voting shares (stocks), participation in managing bodies of such juridical person (including in board of directors, supervisory board, *et cetera*);

iii. the creation of a branch; or

iv. the creation of a representative office,

for the purposes of supplying a service and/or performing an economic activity in sectors other than services.

p) **"commercial presence"** means juridical persons established, constituted, acquired or controlled and/or branches or a representative office created for the purpose of supplying a service and/or performing an economic activity in sectors other than services. For the purposes of this Section commercial presence established, constituted, acquired, controlled or created is hereinafter referred to as "commercial presence set up";

q) **"activities"** means activities of industrial, commercial or professional character of the juridical persons, branches, representative offices, referred to in subparagraph o) of this Article, except for those carried out neither on a commercial basis nor in competition with one or more persons engaged in the same type of activities.

ARTICLE 8.4

Other International Agreements

In case an international agreement to which both Parties to this Chapter are party, including the WTO Agreement, provides for more favourable treatment in respect of matters covered by this Chapter for their persons (service suppliers) and/or their commercial presences, services or investments, such more favourable treatment shall not be affected by this Agreement.

ARTICLE 8.5

Domestic Regulation

1. Article VI of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

2. Without prejudice to the right of a Party to this Chapter to establish and apply licensing procedures and requirements, regarding the services sectors in respect of which such Party has undertaken specific commitments in accordance with Section II (Trade in Services) of this Chapter, as well as regarding the establishment and activities covered by Section III (Establishment, Commercial Presence and Activities) of this Chapter such Party shall ensure that:

   a) its licensing procedures are not in themselves a restriction on the establishment, activities or supply of a service, and that its licensing requirements directly related to eligibility to supply a service were not in themselves an unjustified barrier to the supply of the service;

   b) its competent authorities make a decision on granting/denial of a licence without undue delay and no later than the period specified in relevant laws and regulations of such Party;

   c) any fees charged in connection with the filing and review of an application for a licence would not in themselves be a restriction on the supply of the service, establishment or activities;

   d) once any period for review of an application for a licence established in the laws and regulations of such Party lapsed, and upon the request of

an applicant, such Party's competent authority informs the applicant of the status of its application and whether it was considered complete. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay and specify the additional information required to complete the application. Applicants shall have the opportunity to provide the additional information requested and to make technical corrections in the application. An application shall not be considered complete until all information and documents specified in the respective laws and regulations of that Party are received;

e) upon the written request of an unsuccessful applicant, the competent authority that has denied an application will inform the applicant in writing of the reasons for the denial of the application. However, this provision shall not be construed to require a regulatory authority to disclose information, where that disclosure would impede law enforcement or otherwise be contrary to the public interest or essential security interests;

f) where an application is denied, an applicant shall have the right to submit a new application that attempts to address any prior problems for licensing.

ARTICLE 8.6

Contact Points

The Parties to this Chapter shall designate their contact points to facilitate communications between the Parties to this Chapter on the issues covered by this Chapter and shall exchange information on the details of such contact points. The Parties to this Chapter shall notify each other promptly of any amendments to the details of their contact points.

ARTICLE 8.7

Denial of Benefits

A Party to this Chapter may deny benefits of this Section to a person of the other Party to this Chapter, if the former Party establishes that this person is a juridical person that has no substantive business operations in the territory of the other Party to this Chapter and is owned or controlled by persons of either:

a) any third country; or

b) the former Party.

ARTICLE 8.8

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of Articles 8.18 and 8.37 of this Agreement each Party to this Chapter may adopt and maintain restrictions on trade in services, establishment and investments in respect of which commitments were undertaken by such Party in accordance with this Chapter, including on payments or transfers for transactions related to such commitments referred to in Articles 8.18 and 8.37 of this Agreement in the event of serious balance of payments and external financial difficulties and threat thereof and subject to the condition that such restrictions:

a) shall be applied on a most-favoured-nation basis;

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 to this Chapter;

d) shall not exceed those necessary to deal with circumstances described in this paragraph;

e) shall be temporary and be phased out progressively as the situation specified in this paragraph improve.

2. The Party to this Chapter introducing a restriction under paragraph 1 of this Article shall promptly notify the other Party to this Chapter of such measure.

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

4. Nothing in this Agreement shall affect the rights and obligations of a Party to this Chapter which is a member 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 such Party to this Chapter shall not impose restrictions inconsistently with the conditions provided for in paragraph 1 of this Article.

5. This Article shall not be subject to the dispute settlement procedures stipulated by the Article 8.38 of this Agreement.

ARTICLE 8.9

Accession

1. Notwithstanding Article 15.2 of the Agreement, any Member State of the Eurasian Economic Union may accede to this Chapter on terms and conditions as agreed between Viet Nam and such Member State of the Eurasian Economic Union in respect of Schedules of Specific Commitments and Lists of reservations.

2. In case of accession of a Member State of the Eurasian Economic Union to this Chapter the provisions of this Chapter shall neither apply between the Parties to this Chapter that are Member States of the Eurasian Economic

Union nor shall they grant to Viet Nam any rights and privileges that Member States of the Eurasian Economic Union grant exclusively to each other.

ARTICLE 8.10

Amendments

1. Notwithstanding Article 15.5 of the Agreement, this Chapter may be amended by mutual written consent of the Parties to this Chapter.

2. The amendments to this Chapter resulting from accession of a Member State of the Eurasian Economic Union shall be introduced by mutual written consent of the Parties to this Chapter and the Member State of the Eurasian Economic Union acceding to this Chapter.

ARTICLE 8.11

Consultations

1. The Parties to this Chapter shall consult at the request of either of them, on the matter concerning the interpretation or application of this Chapter.

2. The consultations referred to in paragraph 1 of this Article may be conducted by the Joint Committee established in accordance with Article 1.4 of this Agreement.

3. For the purposes of this Chapter the Joint Committee shall be co-chaired by the representatives of the Parties to this Chapter and any of the decisions of Joint Committee on the matters covered by this Chapter shall be taken by consensus only by the Parties to this Chapter.

ARTICLE 8.12

Settlement of Disputes between the Parties to this Chapter

1. The provisions of Chapter 14 (Dispute Settlement) of this Agreement shall apply with respect to the settlement of disputes between the Parties to this Chapter regarding the interpretation or application of this Chapter with the modifications set out in paragraph 2 of this Article.

2. For the purposes of this Chapter:

   a) the term "a disputing Party" referred to in Chapter 14 of this Agreement means "a Party to this Chapter";

   b) the request for consultations referred to in paragraph 2 of Article 14.6 of this Agreement shall be submitted in writing to the responding Party through its contact points designated in accordance with Article 8.6 of this Agreement;

   c) the request for the establishment of an Arbitral Panel referred to in paragraph 3 of Article 14.7 of this Agreement shall be submitted in writing to the responding Party through its contact points designated in accordance with Article 8.6 of this Agreement; and

   d) the suspension of benefits referred to in Article 14.15 of this Agreement may be performed only in respect of the benefits provided for in this Chapter.

ARTICLE 8.13

Lists of Commitments

The "Schedule of Specific Commitments under Section II (Trade in Services)", "List of Reservations under Section III (Establishment, Commercial Presence and Activities)", the "Schedule of Specific Commitments under Section IV (Movement of Natural Persons)" and the "List of MFN Exemptions in accordance with Articles 8.15 and 8.22 of the Agreement" shall be signed in the

form of Protocol No. 1 between the Socialist Republic of Viet Nam and the Russian Federation to the Free Trade Agreement between the Socialist Republic of Viet Nam, of the one part, and the Eurasian Economic Union and its Member States, of the other part (hereinafter referred to in this Chapter as "Protocol No. 1") on the date of signature of this Agreement. The Protocol No. 1 shall constitute an integral part of this Agreement and shall be binding only in respect of Viet Nam and the Russian Federation.

SECTION II. TRADE IN SERVICES

ARTICLE 8.14

Scope

1. This Section shall apply to any measure of the Parties to this Chapter affecting trade in services.

2. This Section shall not apply to provision of subsidies or other forms of State or municipal support to service suppliers or their services.

ARTICLE 8.15

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Section, each Party to this Chapter shall accord immediately and unconditionally to services and service suppliers of the other Party to this Chapter treatment no less favourable than that it accords to like services and service suppliers of any third country.

2. A Party to this Chapter may maintain a measure inconsistent with paragraph 1 of this Article provided that such a measure is set out in its individual national List in Annex 1 to Protocol No.1.

3. The provisions of this Section shall not be construed to prevent a Party to this Chapter from conferring or according advantages to adjacent countries in order to facilitate trade in services limited to contiguous frontier zones of services that are both locally produced and consumed.

4. Nothing in this Agreement shall be construed to oblige a Party to this Chapter to provide to services or service suppliers of the other Party to this Chapter benefits or privileges that the former Party is providing or will provide in future:

   a) in accordance with the economic integration agreements of the former Party; or

   b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.16

Market Access

1. With respect to market access through the modes of supply defined in Article 8.3 of this Agreement, each Party to this Chapter shall accord to services and service suppliers of the other Party to this Chapter treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule in Annex 2 to Protocol No. 1.[1]

2. In sectors where market access commitments are undertaken, the measures which a Party to this Chapter shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 2 to Protocol No. 1, are defined as:

[1] If a Party to this Chapter undertakes a market-access commitment in relation to the supply of a service from the territory of a Party to this Chapter into the territory of the other Party to this Chapter 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.

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; or

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

ARTICLE 8.17

National Treatment

1. In the sectors inscribed in its Schedule in Annex 2 to Protocol No. 1, and subject to any condition and qualification set out therein, each Party to this Chapter shall accord to services and service suppliers of the other Party to this Chapter, in respect of all measures affecting supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[2]

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

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

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

ARTICLE 8.18

Payments and Transfers

1. Except under the circumstances envisaged in Article 8.8 of this Agreement a Party to this Chapter shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments under this Section.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties to this Chapter 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 to this Chapter shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Section regarding such transactions, except under Article 8.8 of this Agreement or at the request of the International Monetary Fund.

ARTICLE 8.19

Recognition

Article VII of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

SECTION III. ESTABLISHMENT, COMMERCIAL PRESENCE AND ACTIVITIES

ARTICLE 8.20

Scope

1. This Section shall apply to any measure by the Parties to this Chapter affecting establishment, commercial presence and activities.

2. This Section shall apply to commercial presence set up by a person of a Party to this Chapter within the territory of the other Party to this Chapter at the date or after the date of entry into force of this Agreement.

3. This Section shall not apply to provision of subsidies or other forms of State or municipal support to persons and their commercial presence in connection with establishment and/or activities.

ARTICLE 8.21

National Treatment

1. With respect to establishment and subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1, each Party to this Chapter shall grant, within its territory, to the persons of the other Party to this Chapter treatment no less favourable than that it accords in like circumstances to its own persons.

2. With respect to activities and subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1, each Party to this Chapter shall grant to the commercial presence set up by a person of other Party to this Chapter within the territory of the former Party treatment not less favourable than the treatment granted in like circumstances to the commercial presences of its own persons set up within its territory.

ARTICLE 8.22

Most-Favoured-Nation Treatment

1. With respect to establishment and subject to the reservations set out in its individual national List provided for in Annex 1 to Protocol No. 1, each Party to this Chapter shall grant to the persons of the other Party to this Chapter

treatment no less favourable than that it accords in like circumstances to persons of any third country.

2. With respect to activities and subject to the reservations set out in its individual national List provided for in Annex 1 to Protocol No. 1, each Party to this Chapter shall grant to the commercial presence set up by a person of the other Party to this Chapter within the territory of the former Party treatment not less favourable than the treatment granted in like circumstances to the commercial presences of persons of any third country.

3. For greater certainty, this Article shall not apply to international dispute settlement procedures or mechanisms such as those set out in Article 8.38 of this Agreement.

4. Nothing in this Agreement shall be construed to oblige a Party to this Chapter to provide to the persons of the other Party to this Chapter or their commercial presences benefits or privileges that the former Party is providing or will provide in future:

   a) in accordance with economic integration agreements of the former Party; or

   b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.23

Market Access

With respect to establishment and/or activities neither Party to this Chapter shall maintain or apply to persons of the other Party to this Chapter and/or to commercial presences of such persons set up within the territory of the former Party, respectively, limitations in respect of:

   a) form of the commercial presence, including legal form of the entity;

b) total number of commercial presences set up;

c) maximum percentage limit on shareholding by the persons of the other Party to this Chapter in the capital of a juridical person of the former Party or on degree of control over such juridical person; or

d) transactions/operations performed by the commercial presence set up by the person of the other Party to this Chapter in the course of their activities in the form of quota or the requirement of economic needs test

except for the limitations provided for in the individual national List of the former Party set out in Annex 3 to Protocol No. 1.

ARTICLE 8.24

Performance Requirements

1. Subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1 neither Party to this Chapter shall in connection with establishment and/or activities impose or enforce in respect of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party, respectively, any requirement:

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

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

c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities;

d) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

e) to transfer a particular technology, a production process, or other proprietary information to persons in the territory of the former Party; or

f) to supply exclusively from the territory of the former Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party to this Chapter shall condition the receipt or continued receipt of an advantage in connection with establishment and/or activities of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party on compliance with any of the following requirements:

a) to purchase, use or accord a preference to goods produced in the territory of the former Party;

b) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities; or

c) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in paragraph 2 of this Article shall be construed to prevent a Party to this Chapter from conditioning the receipt or continued receipt of an advantage, in connection with establishment and/or activities of the persons of the other Party to this Chapter and/or to commercial presences of that persons set up within the territory of the former Party on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities or carry out research and development, in the territory of the former Party.

4. For greater certainty, nothing in paragraph 1 of this Article shall be construed to prevent a Party to this Chapter from imposing or enforcing any requirement, in connection with commercial presences of persons of the other

Party to this Chapter, to employ or train workers in its territory provided that such employment or training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

5. Subparagraph e) of paragraph 1 of this Article shall not apply:

   a) when a Party to this Chapter authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

   b) when the requirement is imposed or enforced by a court or relevant authority in accordance with the competition laws and regulations of the Party to this Chapter imposing or enforcing the requirement.

6. Subparagraphs a) and b) of paragraph 1 of this Article, and subparagraph a) of paragraph 2 of this Article shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

7. This Article is without prejudice to the rules of origin applied by the Parties to this Chapter that are subject to Chapter 4 (Rules of Origin) of this Agreement.

ARTICLE 8.25

Senior Management Boards of Director

With respect to establishment and/or activities and subject to limitations provided for in its individual national List set out in Annex 3 to Protocol No. 1 and subject to conditions and limitations set out in the Section IV (Movement of Natural Persons) of this Chapter, a Party to this Chapter shall not require that a juridical person of that Party appoint to senior management positions natural persons of any particular nationality.

SECTION IV. MOVEMENT OF NATURAL PERSONS

ARTICLE 8.26

Scope

1. This Section shall apply to measures affecting temporary entry and stay of natural persons of a Party to this Chapter into the territory of the other Party to this Chapter with respect to the categories of such natural persons that are set out in that other Party's Schedule in Annex 4 to Protocol No. 1. Such categories of natural persons may include:

   a) business visitors;

   b) intra-corporate transferees;

   c) installers or servicers;

   d) investors; or

   e) contractual services supplier.

   This Section shall not apply to provision of subsidies or other forms of State or municipal support to service suppliers or their services covered by this Section.

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

3. For greater certainty, nothing in this Agreement shall be construed as a commitment of a Party to this Chapter in respect of any requirement or procedure related to granting visas to the natural persons of the other Party to this Chapter.

4. For the purposes of this Section, "temporary entry or stay" means entry or stay by a natural person of a Party to this Chapter, without the intent to reside permanently within the territory of the other Party to this Chapter.

5. Neither Party to this Chapter may impose or maintain any numerical restriction or requirement of economic needs test relating to temporary entry or stay of natural persons referred to in paragraph 1 of this Article except as provided for in its Schedule in Annex 4 to Protocol No. 1.

ARTICLE 8.27

Recognition

Article VII of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

SECTION V. INVESTMENT

ARTICLE 8.28

Definitions

For the purposes of this Section:

a) **"investment"** means any type of asset invested by the investor of a Party to this Chapter in the territory of the other Party to this Chapter in accordance with the latter Party's laws and regulations, that has the characteristics of an investment, including such characteristics as the commitment to capital or other resources, the expectation of profit and assumption of risk, in particular, though not exclusively:

   i. movable and immovable property as well as any property rights such as mortgages or pledges;

ii. shares, stocks and any other form of participation in capital of a juridical person;

iii. bonds and debentures;

iv. claims to money or claims under contracts having an economic value[3], relating to investments;

v. intellectual property rights;

vi. goodwill;

vii. rights conferred by law or under contract to conduct business activity and having financial value, including, but not limited to construction, production, revenue-sharing contracts and concessions related in particular to exploration, development, extraction and exploitation of natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as investments. Such change shall be made in accordance with laws and regulations of the Party to this Chapter in which territory the investments were made.

b) **"investor of a Party to this Chapter"** means any natural or juridical person of a Party to this Chapter in accordance with its laws and regulations that has made investments in the territory of the other Party to this Chapter;

c) **"returns"** means the amounts derived from an investment including but not limited to profit, dividends, interest, capital gains, royalties and other fees; and

[3] For greater certainty, investment does not mean claims to money that arise solely from:
a) commercial contracts for sale of goods or services; or
b) the extension of credit in connection with such commercial contracts.

d) **"freely usable currency"** means a freely usable currency as determined by the International Monetary Fund in accordance with Articles of Agreement of the International Monetary Fund.

ARTICLE 8.29

Scope

1. This Section shall apply to all investments made by investors of a Party to this Chapter in the territory of the other Party to this Chapter after 19 June 1981, in existence as of the date of entry into force of this Agreement, but it shall not apply to any act or fact that took place or any situation or dispute that arose or ceased to exist before entry into force of this Agreement.

2. Investments of investors of a Party to this Chapter made in the territory of the other Party to this Chapter in the form of establishment and commercial presence, as defined and governed by Section III (Establishment, Commercial Presence and Activities) of this Chapter shall not be covered by Articles 8.30, 8.31, 8.32 and 8.33 of this Agreement.

3. This Section shall not apply to provision of subsidies or other forms of State or municipal support to investors and its investments, except for those subsidies and other forms of State or municipal support to investors and its investments under Article 8.34 of this Agreement.

ARTICLE 8.30

Promotion and Admission of Investments

Each Party to this Chapter shall encourage and create favourable conditions to investors of the other Party to make investments in its territory and admit the investments of investors of the other Party to this Chapter in accordance with the laws and regulations of the former Party.

ARTICLE 8.31

Fair and Equitable Treatment and Full Protection and Security

1. Each Party to this Chapter shall accord to investments of investors of the other Party to this Chapter fair and equitable treatment and full protection and security.

2. "Fair and equitable treatment" referred to in paragraph 1 of this Article requires, in particular, each Party to this Chapter not to deny justice in any judicial or administrative proceedings.

3. "Full protection and security" referred to in paragraph 1 of this Article requires each Party to this Chapter to take such measures as may be reasonably necessary to ensure the protection and security of investments of an investor of the other Party to this Chapter.

4. With respect to investments of an investor of the other Party to this Chapter in the territory of the former Party, "fair and equitable treatment" and "full protection and security" referred to in paragraph 1 of this Article do not require treatment more favourable than that accorded to the former Party's own investors and/or investors of any third country in accordance with its laws and regulations.

5. A determination that there has been a breach of another provision of this Agreement or of a separate international agreement does not establish that there has been a breach of this Article.

ARTICLE 8.32

National Treatment

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments in its territory.

2. Each Party to this Chapter shall reserve the right in accordance with its laws and regulations to apply and introduce exemptions from national treatment, referred to in paragraph 1 of this Article, to foreign investors and their investments including reinvestements.

ARTICLE 8.33

Most-Favoured-Nation Treatment

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable than that it accords, in like circumstances, to investors of any third country and their investments in its territory.

2. For greater certainty, this Article shall not apply to international dispute settlement procedures or mechanisms such as those set out in Article 8.38 of this Agreement.

3. Nothing in this Section shall be construed as to oblige a Party to this Chapter to provide to investors of the other Party to this Chapter or their investments benefits or privileges that the former Party is providing or will provide in future:

   a) in accordance with the economic integration agreements of the former Party; or

   b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.34

Compensation for Losses

Each Party to this Chapter shall accord to investors of the other Party to this Chapter and to investments of investors of the other Party to this Chapter with respect to measures it adopts or maintains relating to losses suffered by investments of such investors in its territory owing to war or other armed conflict, revolt, insurrection, revolution, riot, civil strife or civil disturbance, treatment no less favourable than that it accords, in like circumstances, to:

a) its own investors and their investments; or

b) investors of any third country and their investments.

ARTICLE 8.35

Expropriation and Compensation

1. Neither Party to this Chapter shall nationalise, expropriate or subject to measures equivalent in effect to nationalisation or expropriation an investment of the investor of the other Party to this Chapter (hereinafter referred to as "expropriation"), except:

   a) for a public purpose;

   b) in accordance with the procedure established by the laws and regulations of the former Party;

   c) in a non-discriminatory manner; and

   d) on payment of prompt, adequate and effective compensation in accordance with paragraph 3 of this Article.

2. The determination of whether a measure or series of such measures of either Party to this Chapter have an effect equivalent to nationalisation or expropriation shall require a case-by-case, fact-based inquiry to consider, inter alia:

a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of either Party to this Chapter has an adverse effect on the economic value of investments does not establish that an expropriation has occurred;

b) the character of the measure or series of measures of either Party to this Chapter.

3. The compensation referred to in subparagraph d) of paragraph 1 of this Article shall:

a) be paid without undue delay;

b) be equivalent to the fair market value of the expropriated investment calculated on date when the actual or impending expropriation has become publicly announced whichever is earlier; and

c) be paid in a freely usable currency or, if agreed by the investor, in the currency of the expropriating Party to this Chapter and be freely transferable subject to the provisions of Article 8.37 of this Agreement. From the date of expropriation until the date of payment the amount of compensation shall be subject to accrued interest at a commercial rate established on a market basis.

4. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

5. Notwithstanding paragraphs 1 through 4 of this Article, expropriation relating to land within the territory of either Party to this Chapter shall be carried out in accordance with the laws and regulations of that Party for a purpose established in accordance with such laws and regulations, and upon payment of compensation, which shall be assessed with due consideration to market value and paid without undue delay, in accordance with the laws and regulations of that Party.

ARTICLE 8.36

Subrogation

1. If a Party to this Chapter or its designated agency made a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity against non-commercial risks it has granted in respect of an investment, the other Party to this Chapter shall recognise the subrogation or transfer of any right or claim of the investor in respect of such investment to the former Party or its designated agency. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor. For greater certainty, such right or claim shall be exercised in accordance with the laws and regulations of the latter Party, but without prejudice to Articles 8.21, 8.22, 8.23, 8.24 and 8.25 of this Agreement.

2. Where a Party to this Chapter or its designated agency has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of that Party or its designated agency making the payment, pursue those rights and claims against the other Party to this Chapter.

ARTICLE 8.37

Transfer of Payments

1. Except under the circumstances envisaged in Article 8.8 of this Agreement each Party to this Chapter shall guarantee to investors of the other Party to this Chapter, upon fulfilment by them of all tax and other obligations in accordance with the laws and regulations of the former Party, a free transfer abroad of payments related to their investments, and in particular:

   a) returns;

   b) funds in repayment of loans and credits recognised by each Party to this Chapter as investments, as well as accrued interest;

c) proceeds from sale or full or partial liquidation of investments;

d) compensation, stipulated in the Articles 8.34 and 8.35 of this Agreement;

e) wages and other remunerations received by investors and natural persons of the other Party to this Chapter authorised to work in connection with investments in the territory of the former Party.

2. Transfer of payments shall be made without undue delay in a freely usable currency at the rate of exchange applicable on the date of the transfer pursuant to the exchange laws and regulations of the Party to this Chapter in which territory the investments were made.

ARTICLE 8.38

Settlement of Disputes between a Party to this Chapter and Investor of the Other Party to this Chapter

1. Disputes between a Party to this Chapter and an investor of the other Party to this Chapter arising from an alleged breach of an obligation of the former Party under this Chapter in connection with an investment made by the investor in the territory of the former Party shall be settled to the extent possible amicably by means of negotiations. Such negotiations may include the use of non-binding, third-party procedures, such as good offices, conciliation and mediation.

2. The written request submitted by the investor for negotiations referred to in paragraph 1 of this Article shall include:

a) the name and address of the investor who is a party to a dispute;

b) for each claim the specific provisions under this Chapter alleged to have been breached;

c) the legal and factual basis for each claim;

d) the relief sought and approximate amount of damages claimed.

3. If a dispute cannot be settled amicably by means of negotiations during a period of six months starting from the date of receipt by the Party who is a party to the dispute of the written request of the investor of the other Party to this Chapter, it shall be submitted at the choice of the investor for consideration to:

a) a competent court of the Party to this Chapter in which territory the investments were made, or

b) an *ad hoc* arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or

c) arbitration by the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID"), created pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (ICSID Convention), provided that both the Party who is a party to the dispute and the Party of the investor are party to the ICSID Convention; or

d) arbitration under the ICSID Additional Facility Rules, provided that either the Party who is a party to the dispute or the Party of the investor is a party to the ICSID Convention; or

e) if the parties to a dispute so agree, to any other arbitration institution or under any other arbitration rules.

4. The choice of the institution referred to in paragraph 3 of this Article shall be final.

5. An arbitration award shall be final and binding upon both parties to the dispute. Each Party to this Chapter undertakes to enforce this award in accordance with its laws and regulations.

6. No claim can be submitted to arbitration under this Section if more than three years have elapsed from the date on which the investor who is a party to a dispute first acquired or reasonably should have first acquired, knowledge of the breach alleged under paragraph 1 of this Article.

7. A natural person possessing the nationality of a Party to this Chapter on the date the investments were made may not pursue a claim against that Party under this Article.

CHAPTER 8 *bis*
STATE OWNED, STATE CONTROLLED ENTERPRISES AND ENTERPRISES WITH SPECIAL OR EXCLUSIVE PRIVILEGES

ARTICLE 8 *bis*.1

Scope

This Chapter shall apply only between Viet Nam and the Russian Federation.

ARTICLE 8 *bis*.2

State-Owned, State-Controlled Enterprises and Enterprises with Special or Exclusive Privileges

Viet Nam and the Russian Federation shall ensure that their state-owned or state-controlled enterprises and enterprises with special or exclusive privileges shall operate in a manner consistent with their respective WTO commitments in the Protocols on accession to the WTO of Viet Nam and the Russian Federation, respectively.

CHAPTER 9
INTELLECTUAL PROPERTY

ARTICLE 9.1

Objectives

The Parties confirm their commitment to reducing impediments to trade and investment by promoting deeper economic integration through the creation of intellectual property and effective and adequate utilisation, protection and enforcement of intellectual property rights, taking into account the differences in their respective laws and regulations and in levels of economic development and capacity and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

ARTICLE 9.2

Definitions

For the purposes of this Chapter:

a) **"intellectual property"** means copyright and related rights, trademarks, geographical indications (including appellations of origin of goods), inventions (including utility solutions), utility models, industrial designs, layout designs (topographies) of integrated circuits, plant varieties and undisclosed information;

b) **"geographical indication"** means an indication which identifies a good as originating in the territory of a Party or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin, as defined in Article 22 of the TRIPS Agreement:

c) **"appellation of origin of goods"** means a geographical denomination that constitutes or contains contemporary or historical, official or unofficial, full or abbreviated name of a country, region or locality or other geographical area, which became known through its use in the country of origin in relation to the goods, the quality and characteristics of which are exclusively or essentially determined by the geographical environment, including natural and human factors;

d) **"counterfeit trademark goods"** means goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the laws and regulations of the country of importation. The definition of counterfeit trademark goods above shall apply, *mutatis mutandis,* to counterfeit geographical indication and appellation of origin goods; and

e) **"pirated copyright goods"** means goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the laws and regulations of the country of importation.

ARTICLE 9.3

International Agreements

1. The Parties which are party to the TRIPS Agreement reaffirm their obligations set out therein. The Parties which are not party to the TRIPS Agreement shall follow the principles of the TRIPS Agreement. The Parties reaffirm their obligations set out in the international agreements on intellectual property to which they are party. in particular:

a) the Paris Convention for the Protection of Industrial Property of 20 March 1883 (hereinafter referred to as "the Paris Convention");

b) the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886;

c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 26 October 1961 (the Rome Convention);

d) the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October 1971;

e) the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of 27 June 1989; and

f) the Patent Cooperation Treaty of 19 June 1970.

2. The Parties which are not party to one or more of the international agreements listed below shall endeavour to join:

a) the WIPO Performances and Phonograms Treaty of 20 December 1996;

b) the WIPO Copyright Treaty of 20 December 1996;

c) the Act of International Convention for the Protection of New Varieties of Plants of 19 March 1991; and

d) the Singapore Treaty on the Law of Trademarks of 27 March 2006.

3. The Parties shall endeavour to apply the provisions of the following international agreements:

a) the Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971;

b) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957; and

c) the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968.

ARTICLE 9.4

National Treatment

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

ARTICLE 9.5

Most-Favoured-Nation Treatment

Each Party shall accord to the nationals of the other Party treatment no less favourable than that it accords to the nationals of any other country with regard to the protection of intellectual property set out in Articles 4 and 5 of the TRIPS Agreement.

ARTICLE 9.6

Copyright and Related Rights

1. Without prejudice to the obligations set out in international agreements to which the Parties are party, each Party shall, in accordance with its respective laws and regulations, guarantee and provide effective protection of the interests of authors, performers, producers of phonograms and broadcasting

organisations for their works, performances, phonograms and broadcasts, respectively.

2. Each Party shall aim to ensure that its respective laws and regulations guarantee the effective protection and provide enforcement of copyright and related rights in the digital environment.

ARTICLE 9.7

Trademarks

Each Party shall provide adequate and effective protection of trademarks for goods and services in accordance with its respective laws and regulations, the international agreements to which it is party and the TRIPS Agreement, in particular Articles 15 through 21.

ARTICLE 9.8

Geographical Indications/Appellations of Origin of Goods

1. Each Party shall ensure in its territory adequate and effective legal protection of geographical indications and/or appellations of origin of goods in accordance with its respective laws and regulations, the international agreements to which it is a party and the TRIPS Agreement, in particular Articles 22 through 24.

2. The provisions of appellations of origin of goods in this Chapter shall apply to a denomination which allows to identify a good as originating in the territory of a particular geographical area and although it does not contain the name of the area, which became known as a result of using this denomination in respect of the goods, the quality and characteristics of which meet the requirements provided for in subparagraph c) of Article 9.2 of this Agreement.

3. The Parties recognise that each Party may protect geographical indications via a *sui generis* system of protection of appellations of origin of goods in accordance with its respective laws and regulations. A Party that provides such system of protection shall not be obliged to provide a separate system of protection for geographical indications. The Parties shall provide other legal means in their respective laws and regulations to protect geographical indications other than appellations of origin of goods, such as those of collective marks and/or certification marks. The definition of appellation of origin of goods in subparagraph c) of Article 9.2 of this Agreement and paragraph 2 of this Article shall only apply to a Party which provides a *sui generis* system of protection of appellations of origin of goods at the time of entry into force of this Agreement.

4. In respect of geographical indications and/or appellations of origin of goods, the Parties shall provide the legal means for an interested person of the other Party to prevent:

   a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin;

   b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

5. Nothing in this Chapter shall require a Party to apply its provisions in respect of geographical indications and/or appellations of origin of goods of the other Party to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of such Party.

6. In order to protect the interests of their producers, the Parties shall exchange lists of geographical indications and/or appellations of origin of goods registered by them in respect of goods produced in their territories. The Parties may also agree to exchange the lists of geographical indications protected by other legal means. The relevant procedures for such exchange shall be determined by the competent authorities of the Parties by means

provided for in Article 9.17 of this Agreement. The Parties may agree to enter into negotiations on mutual protection of geographical indications and/or appellations of origin of goods subject to their respective laws and regulations and policy, availability of resources and willingness of each Party.

7. Each Party shall, *ex officio* if its laws and regulations so permit or at the request of an interested person of the other Party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication and/or appellation of origin of goods with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in the former Party is of such a nature as to mislead the public as to the true place of origin.

ARTICLE 9.9

Inventions and Utility Models

1. Each Party shall provide adequate and effective protection of inventions in accordance with its respective laws and regulations, the international agreements to which it is party and the TRIPS Agreement, in particular Articles 27 through 34.

2. Utility models shall be protected in accordance with the respective laws and regulations of the Parties and the Paris Convention.

ARTICLE 9.10

Industrial Designs

Each Party shall provide adequate and effective protection of industrial designs in accordance with its respective laws and regulations, the international agreements to which it is party and the TRIPS Agreement, in particular Articles 25 and 26.

ARTICLE 9.11

Layout Designs (Topographies) of Integrated Circuits

Each Party shall provide adequate and effective protection of layout designs (topographies) of integrated circuits in accordance with its respective laws and regulations, the international agreements to which it is party and the TRIPS Agreement, in particular Articles 35 through 38.

ARTICLE 9.12

New Varieties of Plants

Each Party recognises the importance of providing in its respective laws and regulations a system of protection of new varieties of plants and shall endeavour to provide for the protection of all plant genera and species in accordance with the Act of International Convention for the Protection of New Varieties of Plants of 19 March 1991 and the TRIPS Agreement.

ARTICLE 9.13

Undisclosed Information

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

ARTICLE 9.14

Protection against Unfair Competition

Each Party shall ensure effective protection against unfair competition in accordance with its respective laws and regulations and Article 10*bis* of the Paris Convention.

ARTICLE 9.15

Enforcement of Intellectual Property Rights

The Parties shall ensure in their respective laws and regulations provisions for enforcement of intellectual property rights at the same level as provided for in the TRIPS Agreement, in particular Articles 41 through 50.

ARTICLE 9.16

Border Measures

1. Each Party shall ensure effective enforcement of border measures in accordance with Articles 51 through 57, 59 and 60 of the TRIPS Agreement and that the complementary measures, procedures and remedies, covered by its respective laws and regulations related to customs procedures, are available to permit effective action against counterfeit trademark goods, counterfeit geographical indication and appellation of origin goods, pirated copyright goods.

2. Each Party shall, unless otherwise provided for in this Agreement, adopt procedures to enable a right holder, who has valid grounds for suspecting that importation or exportation is carried out with counterfeit trademark goods, counterfeit geographical indication and appellation of origin goods, pirated copyright goods, to lodge an application to customs authorities claiming to apply measures of intellectual property rights protection provided that importation or exportation in question infringes an intellectual property right under the laws and regulations of the country where the goods are found.

3. Without prejudice to the protection of confidential information, customs authorities shall have the authority to provide the right holder with sufficient opportunity to have any good detained by the customs authorities inspected in order to substantiate the right holder's claims. The customs authorities shall also have the authority to give the importer an equivalent opportunity to have any such good inspected. Customs authorities shall provide the right holder with the information on the names and addresses of the consignor, the

importer and the consignee and of the quantity of the goods in question. Customs authorities shall provide at least the owner of the detained goods with the information on the name and address of the right holder.

4. The Parties are encouraged to exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

ARTICLE 9.17

Competent Authorities, Contact Points and Information Exchange

1. The Parties shall notify each other of the competent authorities responsible for carrying out the procedures provided for in this Chapter, and the contact points designated by each Party to facilitate communications between the Parties on any matter relating to this Chapter.

2. The Parties shall promptly inform each other of any change in the contact points or any significant change in the structure or competence of their competent authorities.

3. The Parties through their contact points shall provide each other with a timely written notification of any significant issue or any change in the legal framework of intellectual property and, if necessary, request consultations to resolve any concern about the issue.

4. With a view to strengthening their cooperation links, the Parties agree to communicate in writing and/or promptly hold expert meetings, upon request of either Party and taking into account the financial capacity of the Parties, on matters related to the international agreements referred to in this Chapter or to future international agreements in the field of intellectual property, to membership in international organisations, such as the World Trade Organization and the World Intellectual Property Organization, as well as to relations of the Parties with third countries on matters concerning intellectual property and to other issues relating to the implementation of this Chapter.

CHAPTER 10

GOVERNMENT PROCUREMENT

ARTICLE 10.1

Cooperation

1. The Parties recognise the importance of cooperation in the field of government procurement in accordance with their respective laws and regulations and given the available resources.

2. The Parties shall cooperate for the purposes of improving transparency, promoting fair competition and the use of electronic technologies in the field of government procurement.

3. The Parties shall inform each other as soon as possible of any significant modification of their respective laws and regulations and/or government procurement procedures.

4. The cooperation activities shall include the exchange of, where appropriate, non-confidential information, consultations, as provided for in Article 10.3 of this Agreement, and technical assistance.

5. The Parties shall endeavour to cooperate in the following:

   a) facilitating participation of suppliers in government procurement, in particular, with respect to small and medium enterprises;

   b) exchanging experience and information, such as regulatory frameworks, best practices and statistics;

   c) developing and expanding the use of electronic means in government procurement systems;

   d) capacity building for government officials in best government procurement practices;

e) institutional strengthening for the fulfilment of the provisions of this Chapter; and

f) enhancing the ability to provide multilingual access to procurement opportunities.

6. The Parties shall develop further cooperation based on mutual experience in the field of government procurement, including electronic forms of procurement.

ARTICLE 10.2

Information on the Procurement System

1. For the purposes of transparency, the Parties shall make publicly available their respective laws and regulations relating to government procurement.

2. The Parties shall exchange the lists of media resources in which the Parties publish relevant information on government procurement.

3. The Parties shall endeavour to establish and maintain electronic means for publishing their respective laws and regulations and information on government procurement, given the available resources.

4. Each Party may expand the content of the government procurement information and the scope of the services provided through electronic means.

ARTICLE 10.3

Consultations

1. In the event of any disagreement relating to the application of the provisions of this Chapter, the Parties shall make every effort to reach a mutually satisfactory resolution through consultations.

2. Each Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultations regarding the implementation of this Chapter.

3. A request for such consultations shall be submitted to the other Party's contact point established under Article 10.5 of this Agreement. Unless the Parties agree otherwise, they shall hold consultations within 60 days from the date of receipt of the request.

4. Consultations may be conducted in person or via email, teleconference, videoconference, or any other means, as agreed by the Parties.

ARTICLE 10.4

Non-Application of Chapter 14 (Dispute Settlement)

Any matter arising under this Chapter shall not be subject to the dispute settlement mechanism provided for in Chapter 14 (Dispute Settlement) of this Agreement.

ARTICLE 10.5

Contact Points

1. Each Party shall designate a contact point to monitor the implementation of this Chapter. The contact points shall work collaboratively to facilitate the implementation of this Chapter.

2. The Parties shall provide each other with the names and contact details of their contact points.

3. The Parties shall promptly notify each other of any change to their contact points.

ARTICLE 10.6

Further Negotiations

The Parties may enter into negotiations with a view to liberalising their respective government procurement markets and discussing potential market access issues, if necessary.

CHAPTER 11
COMPETITION

ARTICLE 11.1

Basic Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations and respect the differences in their capacity in the area of competition policy.

2. Each Party shall, in accordance with its respective laws and regulations, take measures which it considers appropriate by proscribing anti-competitive business conduct, in order to promote the efficient functioning of its respective market and consumer welfare.

3. The measures each Party adopts or maintains to proscribe anti-competitive business conduct shall be taken in conformity with the principles of transparency, non-discrimination and fairness.

ARTICLE 11.2

Anti-Competitive Practices

1. The Parties shall take all necessary measures in accordance with their respective laws and regulations in order to prevent and restrict anti-competitive practices that affect trade between the Parties. Particular attention shall be given to the following practices which are incompatible with the proper operation of this Agreement:

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

b) abuse by one or more enterprises of a dominant position; and

c) unfair competition.

2. The issues concerning state monopolies and enterprises entrusted with special or exclusive rights shall not be subject of this Chapter.

ARTICLE 11.3

Cooperation

1. The Parties recognise the importance of cooperation activities relating to competition law enforcement and competition policy. Cooperation shall be conducted in accordance with the respective laws and regulations and based on the availability of the necessary resources. Cooperation shall include exchange of non-confidential information, consultations, cooperation in enforcement activities, as provided for in paragraph 2 of this Article, and technical assistance, including:

   a) exchange of experience regarding the promotion and enforcement of competition law and policy;

   b) joint seminars on competition law and law enforcement activities of the Parties; and

   c) any other form of cooperation as agreed by the Parties.

2. Cooperation in law enforcement is carried out as follows:

   a) if a Party considers that its interests are affected in the territory of the other Party in the sense of Article 11.2 of this Agreement, it may request that the other Party initiates appropriate enforcement activities. Such request shall take place if possible at an early stage of the anti-competitive practice under Article 11.2 of this Agreement and should be of sufficient detail;

b) the requested Party shall carefully consider the possibility for initiating enforcement activities or expanding ongoing enforcement activities in accordance with the requirements of its respective laws and regulations and inform the requesting Party of the results of such consideration as soon as practically possible;

c) if enforcement activities are initiated or expanded, the requested Party shall inform the requesting Party of their outcome and, to the extent possible, of significant interim developments; and

d) nothing in this Chapter shall limit the discretion of the requested Party to decide whether to undertake enforcement activities with respect to the anti-competitive practices identified in the request, or precludes the requesting Party from withdrawing its request.

ARTICLE 11.4

Consultations

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, upon request of the other Party, enter into consultations. Such consultations shall be without prejudice to the rights of each Party to enforce their respective laws and regulations. In the request for consultations, the requesting Party shall indicate how the matter affects trade between the Parties. The Party receiving such request shall promptly hold consultations in order to achieve mutually satisfactory results in consistence with the provisions of this Chapter.

2. During the consultations in accordance with this Article, the requested Party shall provide full and sympathetic consideration to the matter that is the subject of consultations within a reasonable period of time. Both Parties shall aspire to reach consensus on the issue of concern through constructive dialogues.

3. If a Party considers that its interests are still affected after consultations in accordance with this Article, it may request consultations in the Joint Committee.

ARTICLE 11.5

Use of Information

1. Where a Party provides information to the other Party for the purposes of implementing this Chapter, such information shall be used by the latter Party only for such purposes and shall not be disclosed or transferred to any other organisation and/or individual without the consent of the Party providing the information.

2. Notwithstanding any other provision of this Chapter, neither Party is required to communicate information to the other Party if such communication is prohibited by their respective laws and regulations.

ARTICLE 11.6

Non-Application of Chapter 14 (Dispute Settlement)

Any matter arising under this Chapter shall not be subject to the dispute settlement mechanism provided for in Chapter 14 (Dispute Settlement) of this Agreement.

ARTICLE 11.7

Contact Points

1. Each Party shall designate a contact point to monitor the implementation of this Chapter. The contact points shall work collaboratively to facilitate the implementation of the provisions of this Chapter.

2. The Parties shall exchange information containing the names of the designated competent authorities that shall act as their contact points and the contact details of relevant officials in such organisations, including telephone and facsimile numbers, email addresses and other relevant details.

3. The Parties shall promptly notify each other of any change to their contact points or relevant contact details.

CHAPTER 12
SUSTAINABLE DEVELOPMENT

ARTICLE 12.1

Objectives

1. The Parties agree to implement this Chapter in a manner consistent with labour and environmental protection, and sustainable use of their resources. In this regard the Parties shall:

   a) strengthen cooperation on environmental and labour issues; and

   b) promote sustainable development.

2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development.

3. The Parties shall endeavour to promote their trade relations for the purposes of sustainable development to the extent possible.

ARTICLE 12.2

Scope

This Chapter shall apply to measures adopted or maintained by the Parties affecting trade-related aspects of environmental and labour issues.

ARTICLE 12.3

General Principles

1. The Parties recognise the importance of and the need to enhance the capacity to address trade-related aspects of environmental and labour issues, taking into consideration the levels of development of the Parties.

2. The Parties recognise the need to strengthen cooperation with the aim of resolving environmental and labour issues of bilateral, regional and global concerns.

3. The Parties recognise the sovereign right of each Party to establish its own levels of national environmental and labour protection and environmental and labour development policies and priorities, and to adopt or modify accordingly its relevant environmental and labour laws and regulations and policies.

4. The Parties may recognise the significance of taking into account scientific, technical and other information as well as relevant and commonly recognised international standards when preparing and implementing measures aimed at protecting the environment and labour that affect trade between the Parties.

5. The provisions of this Chapter shall be without prejudice to the Parties' obligations in accordance with other Chapters of this Agreement, including Chapter 8 (Trade in Services, Investment and Movement of Natural Persons).

ARTICLE 12.4

Upholding Levels of Protection

1. The Parties recognise the importance of mutually supportive trade, environment and labour policies and practices as well as the efforts to improve environmental and labour protection and enhance trade between the Parties.

2. Each Party shall endeavour to ensure that its environmental and labour laws and regulations, policies and practices are not used for the purposes of trade protectionism.

3. Neither Party shall seek to encourage or gain trade or investment advantage by weakening or failing through a sustained or recurring course of action or inaction to enforce or administer its environmental and labour laws and regulations, policies and practices in a manner affecting trade between the Parties.

ARTICLE 12.5

Environmental and Labour Cooperation

1. The Parties recognise the importance of strengthening their capacity to protect the environment and labour conditions and promoting sustainable development in their trade and investment relations in accordance with their respective laws and regulations.

2. The Parties shall endeavour to expand their cooperation in bilateral, regional, and multilateral fora on environmental and labour issues, recognising that such cooperation will help them achieve their shared environmental and labour goals and objectives, including the development and improvement of environmental and labour protection, practices, and technologies.

3. Cooperation activities under this Chapter may take the following forms:

   a) exchange of knowledge and experiences;

   b) exchange of experts and researchers;

   c) organisation of joint workshops;

   d) promotion of cooperative activities between relevant ministries, research institutes and private enterprises; and

   e) development and implementation of joint research, projects and other relevant activities in areas of mutual interest.

4. The Parties recognise the following fields of cooperation as particularly significant:

a) resolving trade-related environmental problems;

b) environmental policy development and institutional building;

c) training and education on environment and climate change issues and environmental protection;

d) exchange of experience and information in the development and enforcement of labour and employment-related laws and regulations and policies;

e) technical assistance and joint/cooperation projects on human resources development and social security policy aimed at creating decent work conditions or on the protection of the environment;

f) other mutually agreed areas in accordance with relevant laws and regulations of the Parties;

g) exchange of information, technology and experience in areas of environmental standards and models, training and education;

h) environmental education and training aimed at raising public awareness; and

i) technical assistance and joint regional research programmes.

ARTICLE 12.6

Environmental and Labour Consultations

1. Either Party may request consultations regarding any matter arising under this Chapter through a written request submitted to the contact point designated by the other Party in accordance with Article 1.7 of this Agreement. The request

shall contain information that is specific and sufficient to enable the Party receiving such request to respond. Unless the Parties agree otherwise, consultations shall commence within the period of 30 days after a Party receives the request for consultations.

2. The purpose of the consultations is to seek a mutually agreed solution to the matter. The Parties shall make every effort to arrive at a mutually satisfactory outcome, including by considering appropriate cooperation activities to resolve the matter. The Parties may agree to seek advice or assistance from domestic experts they deem appropriate.

3. If a Party considers that the matter needs further discussion such Party may bring the matter to the Joint Committee in order to reach an appropriate resolution of the matter.

ARTICLE 12.7

International Labour Standards and Agreements

1. The Parties recall the obligations deriving from membership of the International Labour Organization (ILO) and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its 86th Session in 1998.

2. The Parties reaffirm their commitment under the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006 to recognise full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.

ARTICLE 12.8

Review of Sustainability Impacts

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

ARTICLE 12.9

Non-Application of Chapter 14 (Dispute Settlement)

Any matter arising under this Chapter shall not be subject to the dispute settlement mechanism provided for in Chapter 14 (Dispute Settlement) of this Agreement.

CHAPTER 13
ELECTRONIC TECHNOLOGIES IN TRADE

ARTICLE 13.1

Scope and Coverage

1. The Parties recognise that electronic commerce may increase trade opportunities and contribute to economic growth, and underscore the importance of promoting the use of electronic technologies in trade in order to minimise the costs and facilitate trade, as well as the importance of cooperation between the Parties on the issues of electronic commerce under this Chapter.

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

   a) the use of electronic documents in trade between the Parties by means of digital signatures and a trusted third party; and

   b) electronic commerce as defined in paragraph b) of Article 13.2 of this Agreement.

3. For the purposes of paragraph 2 of this Article such measures shall include the measures taken by:

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

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

4. In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of such obligations and commitments by regional and local governments and authorities and non-governmental bodies within its territory.

ARTICLE 13.2

Definitions

For the purposes of this Chapter:

a) **"digital certificate"** means an electronic document issued by an authorised organisation, containing information confirming that the particular digital signature belongs to a certain person;

b) **"electronic commerce"** means trade with the use of electronic technologies;

c) **"electronic document"** means a document where information is presented in an electronic form which can be certified by means of a digital signature;

d) **"digital signature"** means information in electronic form obtained by using public-key cryptography, which is the transformation of information by using a private signature key that is verified by a public signature key, and attached or connected to the other information in electronic form (information being signed), confirming its integrity and authenticity and assuring inability to deny authorship;

e) **"electronic technologies"** means a combination of software and hardware that provides interaction between the persons of the Parties using an electronic document;

f) **"electronic authentication"** means the process of establishing confidence in user identities electronically presented to an information system; and

g) **"trusted third party"** means an organisation vested with the rights in accordance with the domestic laws and regulations of each Party to verify a digital signature in a digitally signed electronic document at a fixed time with regard to author and/or recipient of electronic document.

ARTICLE 13.3

Electronic Authentication

The Parties shall endeavour to work towards mutual recognition of digital signatures in the exchange of electronic documents by means of a trusted third party service.

ARTICLE 13.4

Use of Electronic Documents

1. The Parties shall endeavour:

    a) not to adopt or maintain domestic laws and regulations containing the requirement to confirm the authenticity of the transactions made in electronic form by presenting documents in paper form; and

    b) to ensure that the documents related to trade transactions are presented to the competent authorities of the Parties in the form of an electronic document that is digitally signed.

2. The Parties shall endeavour to ensure that in cases where any document is required for the importation of a product, a participant of trade transaction could receive such document confirming that the product is imported in accordance with the requirements of the importing country in electronic form.

ARTICLE 13.5

Private Data Protection

The Parties shall endeavour to adopt and maintain in force measures aimed at the protection of private data of electronic commerce users.

ARTICLE 13.6

Cooperation on Electronic Technologies in Trade

1. The Parties shall exchange information and experience with regard to laws and regulations and programmes in the field of electronic technologies in trade, in particular with regard to private data protection and improvement of consumer confidence.

2. The Parties recognise the necessity of participation in bilateral, regional and multilateral fora on establishing legal frameworks regulating electronic commerce.

ARTICLE 13.7

Electronic Commerce Development

Recognising the global nature of electronic commerce and the importance of facilitating the use and development of electronic commerce, the Parties shall:

a) endeavour to develop the legal frameworks for electronic commerce using relevant international standards on data collection and in conformity with international practices including, where possible, decisions on electronic commerce taken within the framework of the WTO;

b) encourage the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines and enforcement mechanisms that foster electronic commerce;

c) promote the adoption of transparent and appropriate measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce; and

d) promote the cooperation between their respective national consumer protection agencies on issues related to cross-border electronic commerce in order to enhance consumer welfare.

ARTICLE 13.8

Implementing Arrangements

1. Competent authorities of the Parties may conclude implementing arrangements on any matter within the scope of this Chapter. In particular, the implementing arrangements shall set out understandings reached in accordance with Articles 13.3, 13.4 and 13.5 of this Agreement.

2. The Parties through the relevant competent authorities shall take all necessary actions to apply the implementing arrangements within a jointly determined reasonable period of time.

CHAPTER 14
DISPUTE SETTLEMENT

ARTICLE 14.1

Objectives

The objective of this Chapter is to provide an effective and transparent process for the settlement of disputes arising under this Agreement.

ARTICLE 14.2

Definitions

For the purposes of this Chapter:

a) **"Arbitral Panel"** means an Arbitral Panel established pursuant to Article 14.7 of this Agreement; and

b) **"disputing Parties"** means the complaining Party and the responding Party. The Member States of the Eurasian Economic Union and the Eurasian Economic Union may act jointly or individually as a disputing Party. In the latter case if a measure is taken by a Member State of the Eurasian Economic Union, such Member State of the Eurasian Economic Union shall be a disputing Party, and if a measure is taken by the Eurasian Economic Union, it shall be a disputing Party.

ARTICLE 14.3

Scope and Coverage

1. Except as otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties regarding the interpretation and/or application of this Agreement wherever a Party considers

that the other Party has failed to carry out its obligations under this Agreement.

2. Disputes regarding the same matter between the same disputing Parties arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.

3. For the purposes of this Agreement, the procedural provisions of the relevant incorporated articles of the WTO Agreement relating to dispute settlement in case of non-compliance or possible violation shall not be applied to any Member State of the Eurasian Economic Union which is not a Member of the WTO.

4. For the purposes of paragraph 2 of this Article, dispute settlement procedures under the WTO Agreement are deemed to be initiated by a disputing Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be initiated upon a request for arbitration pursuant to paragraph 1 of Article 14.7 of this Agreement.

ARTICLE 14.4

Information Exchange and *Amicus Curiae*

1. The distribution among the Member States of the Eurasian Economic Union and the Eurasian Economic Union of any procedural document relating to any dispute arising under this Agreement shall not be viewed as a violation of the provisions on confidentiality under this Agreement and/or WTO Agreement.

2. Any Member State of the Eurasian Economic Union and the Eurasian Economic Union having substantial interest in a matter in dispute may have an opportunity to be heard and to make written submissions to the Arbitral Panel as *amicus curiae*.

ARTICLE 14.5

Good Offices, Conciliation or Mediation

1. The disputing Parties may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and be terminated at any time upon the request by either disputing Party.

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

3. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the disputing Parties during those proceedings, shall be confidential and without prejudice to the rights of either disputing Party in any further proceeding.

ARTICLE 14.6

Consultations

1. The Parties shall make every attempt through consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Chapter.

2. A request for consultations shall be submitted in writing to the responding Party through its contact point or contact points designated in accordance with Article 1.7 of this Agreement as well as to the Joint Committee and shall give the reasons for the request, including identification of any measure or other matter at issue and an indication of the legal basis for the complaint.

3. When the complaining Party submits a request for consultations pursuant to paragraph 2 of this Article, the responding Party shall:

a) reply to the request in writing within 10 days from the date of its receipt; and

b) enter into consultations in good faith within 30 days, or 10 days in cases of urgency, including those concerning perishable goods, from the date of the receipt of the request with a view to reaching a prompt and mutually satisfactory resolution of the matter.

4. Periods of time specified in paragraph 3 of this Article may be changed by agreement of the disputing Parties.

5. The consultations shall be confidential, and without prejudice to the rights of either disputing Party in any further proceeding.

6. A disputing Party may request the other disputing Party to make available for the consultations experts from its governmental agencies or other regulatory bodies who have expertise in the matter under consultations.

ARTICLE 14.7

Establishment of Arbitral Panel

1. The complaining Party that made a request for consultations under Article 14.6 of this Agreement may request in writing the establishment of an Arbitral Panel:

a) if the responding Party does not comply with the periods of time in accordance with paragraph 3 or 4 of Article 14.6 of this Agreement;

b) if the disputing Parties fail to resolve the dispute through such consultations within 60 days, or within 20 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for such consultations; or

c) if the disputing Parties jointly consider that consultations have failed to settle the dispute during the period of time specified in subparagraph b) of this paragraph.

2. In cases of urgency, including those concerning perishable goods, the disputing Parties shall make every effort to accelerate the proceedings to the greatest extent possible.

3. The request for the establishment of an Arbitral Panel shall be made in writing to the responding Party through its contact points designated in accordance with Article 1.7 of this Agreement as well as to the Joint Committee. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

4. The requirements and procedures specified in this Article may be changed by mutual agreement of the disputing Parties.

ARTICLE 14.8

Appointment of Arbitrators

1. The Arbitral Panel shall consist of three members.

2. Within 30 days of receipt of the request to establish an Arbitral Panel by the responding Party, each disputing Party shall appoint an arbitrator. Within 15 days of the appointment of the second arbitrator, the appointed arbitrators shall choose by mutual agreement the chair of the Arbitral Panel who shall not fall under any of the following disqualifying criteria:

a) being a national of Viet Nam or a Member State of the Eurasian Economic Union; or

b) having usual place of residence in the territory of Viet Nam or a Member State of the Eurasian Economic Union.

3. If the necessary appointments have not been made within the periods of time specified in paragraph 2 of this Article, either disputing Party may, unless otherwise agreed by the disputing Parties, invite the Secretary-General of the Permanent Court of Arbitration (hereinafter referred to as "PCA") to be the appointing authority. In case the Secretary-General of the PCA is a national of Viet Nam or a Member State of the Eurasian Economic Union or is incapable to realise this appointing function, the Deputy Secretary-General of the PCA or the officer next in seniority who is not a national Viet Nam or a Member State of the Eurasian Economic Union and who is capable to realise this appointing function shall be requested to make the necessary appointments.

4. All arbitrators shall:

   a) have expertise and/or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

   b) be chosen strictly on the basis of objectivity, impartiality, reliability and sound judgment;

   c) be independent of, and not be affiliated with or take instructions from a Party; and

   d) disclose to the disputing Parties any direct or indirect conflicts of interest in respect of the matter at hand.

5. Individuals may not serve as arbitrators for a dispute if they have dealt with the dispute previously in any capacity, including in accordance with Article 14.5 of this Agreement.

6. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 15 days in accordance with the procedure as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. Any period of time applicable to the proceeding shall be suspended beginning on the date the arbitrator resigns or becomes unable to act and ending on the date a replacement is selected.

7. The date of establishment of the Arbitral Panel shall be the date on which the chair of the Arbitral Panel is appointed.

8. The requirements and procedures specified in this Article may be changed by mutual agreement of the disputing Parties.

ARTICLE 14.9

Functions of Arbitral Panel

1. The functions of an Arbitral Panel are to make an objective assessment of the dispute before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement, and to make such findings and rulings necessary for the resolution of the dispute referred to it as it deems appropriate as well as to determine at the request of a disputing Party the conformity of any implementing measures and/or relevant suspension of benefits with its final report.

2. The findings and rulings of an Arbitral Panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

ARTICLE 14.10

Proceedings of Arbitral Panel

1. The Arbitral Panel proceedings shall be conducted in accordance with the provisions of this Chapter.

2. Subject to paragraph 1 of this Article, the Arbitral Panel shall regulate its own procedures in relation to the rights of the disputing Parties to be heard and its deliberations in consultation with the disputing Parties. The disputing Parties in consultation with the Arbitral Panel may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.

3. After consulting the disputing Parties, the Arbitral Panel shall as soon as practicable and whenever possible within 10 days after its establishment, fix the timetable for the Arbitral Panel process. The timetable shall include precise deadlines for written submissions by the disputing Parties. Modifications to such timetable may be made by mutual agreement of the disputing Parties in consultation with the Arbitral Panel.

4. Upon request of a disputing Party or on its own initiative, the Arbitral Panel may, at its discretion, seek information and/or technical advice from any individual or body which it deems appropriate. However, before the Arbitral Panel seeks such information and/or advice, it shall inform the disputing Parties. Any information and/or technical advice so obtained shall be submitted to the disputing Parties for comment. Where the Arbitral Panel takes the information and/or technical advice into account in the preparation of its report, it shall also take into account any comment by the disputing Parties on the information and/or technical advice.

5. The Arbitral Panel shall make its procedural decisions, findings and rulings by consensus, provided that where the Arbitral Panel is unable to reach consensus such procedural decisions, findings and rulings may be made by majority vote. The Arbitral Panel shall not disclose which arbitrators are associated with majority or minority opinions.

6. The Arbitral Panel shall meet in closed session. The disputing Parties shall be present at the meetings only when invited by the Arbitral Panel to appear before it.

7. The hearings of the Arbitral Panel shall be closed to the public, unless the disputing Parties agree otherwise.

8. The disputing Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information provided or written submission made by a disputing Party to the Arbitral Panel, including any comment on the descriptive part of the initial report and response to the questions put by the Arbitral Panel, shall be made available to the other disputing Party.

9. The deliberations of the Arbitral Panel and the documents submitted to it shall be kept confidential.

10. Nothing in this Chapter shall preclude a disputing Party from disclosing statements of its own positions to the public. A disputing Party shall treat as confidential information submitted by the other disputing Party to the Arbitral Panel which that other disputing Party has designated as confidential. A disputing Party shall also, upon request of a Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

11. The venue for hearings shall be decided by mutual agreement of the disputing Parties. If there is no agreement, the venue shall alternate between the capitals of the disputing Parties with the first hearing to be held in the capital of the responding Party.

ARTICLE 14.11

Terms of Reference of Arbitral Panel

Unless the disputing Parties agree otherwise within 20 days from the date of receipt of the request for the establishment of the Arbitral Panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an Arbitral Panel pursuant to Article 14.7 of this Agreement and to make findings and rulings of law and fact together with the reasons therefore for the resolution of the dispute.".

ARTICLE 14.12

Termination or Suspension of Proceedings

1. The Arbitral Panel shall be terminated upon the joint request of the disputing Parties. In such event, the disputing Parties shall jointly notify the chair of the Arbitral Panel and the Joint Committee.

2. The Arbitral Panel shall, upon the joint request of the disputing Parties, suspend its work at any time for a period not exceeding 12 consecutive months from the date of receipt of such joint request. In such event, the disputing Parties shall jointly notify the chair of the Arbitral Panel. Within this period, either disputing Party may authorise the Arbitral Panel to resume its work by notifying the chair of the Arbitral Panel and the other disputing Party. In that event, all relevant periods of time set out in this Chapter shall be extended by the amount of time that the work was suspended for. If the work of the Arbitral Panel has been suspended for more than 12 consecutive months, the Arbitral Panel shall be terminated. The authority for establishment of a new Arbitral Panel by the original disputing Parties on the same matter referred to in the request for the establishment of the original Arbitral Panel shall lapse unless the disputing Parties agree otherwise.

ARTICLE 14.13

Reports of Arbitral Panel

1. The reports of the Arbitral Panel shall be drafted without the presence of the disputing Parties and shall be based on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any information and/or technical advice provided to it in accordance with paragraph 4 of Article 14.10 of this Agreement.

2. The Arbitral Panel shall issue its initial report within 90 days, or 60 days in cases of urgency, including those concerning perishable goods, from the date of establishment of the Arbitral Panel. The initial report shall contain, *inter alia*, both the descriptive sections and the Arbitral Panel's findings and conclusions.

3. In exceptional circumstances, if the Arbitral Panel considers it cannot issue its initial report within the periods of time specified in paragraph 2 of this Article,

it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its initial report. Any delay shall not exceed a further period of 30 days unless the disputing Parties agree otherwise.

4. A disputing Party may submit written comments on the initial report to the Arbitral Panel within 15 days of receiving the initial report unless the disputing Parties agree otherwise.

5. After considering any written comment by the disputing Parties and making any further examination it considers necessary, the Arbitral Panel shall present to the disputing Parties its final report within 30 days of issuance of the initial report, unless the disputing Parties agree otherwise.

6. If in its final report, the Arbitral Panel finds that a disputing Party's measure does not conform with this Agreement, it shall include in its findings and rulings a requirement to remove the non-conformity.

7. The disputing Parties shall release the final report of the Arbitral Panel as a public document within 15 days from the date of its issuance, subject to the protection of confidential information, unless any disputing Party objects. In this case the final report shall still be released for all Parties to the Agreement.

8. The final report of the Arbitral Panel shall be final and binding for the disputing Parties with regard to a particular dispute.

ARTICLE 14.14

Implementation

1. The disputing Parties shall immediately comply with the rulings of the Arbitral Panel. Where it is not practicable to comply immediately, the disputing Parties shall comply with the rulings within a reasonable period of time. The reasonable period of time shall be mutually determined by the disputing Parties. Where the disputing Parties fail to agree on the reasonable period of time within 45 days of the issuance of the Arbitral Panel's final

report, either disputing Party may refer the matter to the original Arbitral Panel, which shall determine the reasonable period of time after consulting with the disputing Parties.

2. Where there is disagreement between the disputing Parties as to whether a disputing Party has eliminated the non-conformity as determined in the report of the Arbitral Panel within the reasonable period of time as determined pursuant to this Article, the other disputing Party may refer the matter to the original Arbitral Panel.

3. The Arbitral Panel shall issue its report within 60 days from the date on which the matter referred to in paragraph 1 or 2 of this Article was submitted for its consideration. The report shall contain the determination of the Arbitral Panel and the reasons for its determination. When the Arbitral Panel considers that it cannot issue its report within this period of time, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties agree otherwise.

4. The disputing Parties may at all times continue to seek mutually satisfactory resolution on the implementation of the final report of the Arbitral Panel.

ARTICLE 14.15

Compensation and Suspension of Benefits

1. If a disputing Party does not comply with the rulings of the Arbitral Panel within the reasonable period of time determined in accordance with Article 14.14 of this Agreement, or notifies the other disputing Party that it does not intend to do so, and/or if the original Arbitral Panel determines that a disputing Party did not comply with the rulings of the Arbitral Panel in accordance with Article 14.14 of this Agreement, such disputing Party shall, if so requested by the other disputing Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the receipt of the request, the other disputing Party shall be entitled to suspend the application of benefits granted

under this Agreement in respect of the responding Party but only equivalent to those affected by the measure that the Arbitral Panel has found not to be in conformity with this Agreement.

2. In considering what benefits to suspend, a disputing Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the Arbitral Panel has found not to be in conformity with this Agreement. If such disputing Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors it may suspend benefits in other sectors.

3. A disputing Party shall notify the other disputing Party of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence at least 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of such notification, the other disputing Party may request the original Arbitral Panel to rule on whether the benefits which a disputing Party intends to suspend are equivalent to those affected by the measure found not to be in conformity with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2 of this Article. The rulings of the Arbitral Panel shall be given within 45 days from the receipt of such request and shall be final and binding to the disputing Parties. Benefits shall not be suspended until the Arbitral Panel has issued its rulings.

4. Compensation and/or suspension of benefits shall be temporary and shall not be preferred to full elimination of the non-conformity as determined in the final report of the Arbitral Panel. Compensation and/or suspension shall only be applied by a disputing Party until the measure found not to be in conformity with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the disputing Parties have resolved the dispute otherwise.

5. Upon request of a disputing Party, the original Arbitral Panel shall rule on the conformity with the final report of any implementing measure adopted after the suspension of benefits and, in light of such rulings, whether the suspension of benefits should be terminated or modified. The rulings of the Arbitral Panel shall be made within 30 days from the date of the receipt of such request.

ARTICLE 14.16

Expenses

1. Unless the disputing Parties agree otherwise:

   a) each disputing Party shall bear the costs of its appointed arbitrator, its own expenses and legal costs; and

   b) the costs of the chair of the Arbitral Panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the disputing Parties.

2. Upon request of a disputing Party, the Arbitral Panel may decide on the expenses referred to in subparagraph b) of paragraph 1 of this Article taking into account the particular circumstances of the case.

ARTICLE 14.17

Language

1. All proceedings and documents pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in the proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language, the disputing Party submitting it shall provide an English language translation of such document.

CHAPTER 15
FINAL PROVISIONS

ARTICLE 15.1

Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

ARTICLE 15.2

Accession

1. A new Member State of the Eurasian Economic Union shall accede to this Agreement if the Parties mutually agree on such accession. Such accession shall be done through an additional protocol to this Agreement.

2. The Eurasian Economic Commission shall promptly notify Viet Nam of any third country receiving the status of the candidate for membership in the Eurasian Economic Union and of any accession to the Eurasian Economic Union.

3. Without prejudice to the accession of the candidate Member State to the Eurasian Economic Union, the provisions included in Chapter 8 (Trade in Services, Investment and Movement of Natural Persons) of this Agreement may be negotiated by Viet Nam on the one side and the candidate Member State of the Eurasian Economic Union on the other side.

4. Viet Nam and the candidate Member State of the Eurasian Economic Union shall endeavour to complete the negotiations envisaged in paragraph 3 of this Article prior to the candidate Member State becoming a Member State of the Eurasian Economic Union.

ARTICLE 15.3

Withdrawal and Termination

1. Each Party may withdraw from this Agreement by giving a six-month advance notice in writing to the other Party.

2. This Agreement shall terminate for any Member State of the Eurasian Economic Union which withdraws from the Treaty on the EAEU on the same date as the withdrawal takes effect. Viet Nam shall be notified in writing by the Eurasian Economic Union of such withdrawal six months in advance.

ARTICLE 15.4

Evolutionary Clause

1. The Parties undertake to review this Agreement in the light of further developments in international economic relations, *inter alia,* within the framework of the WTO, and to examine in this context and in the light of any relevant factor the possibility of further developing and deepening their cooperation under this Agreement and to extend it to areas not covered therein. The Joint Committee may, where appropriate, make recommendations to the Parties, particularly with a view to opening up negotiations.

2. The Parties shall undertake a general review of this Agreement with a view to furthering its objectives in three years after the date this Agreement enters into force, and every five years thereafter, unless the Parties agree otherwise.

ARTICLE 15.5

Amendments

1. This Agreement may be amended by the Parties by mutual written consent.

2. Amendments shall enter into force according to the provisions of Article 15.6

of this Agreement. All amendments shall constitute an integral part of this Agreement.

ARTICLE 15.6

Entry into Force

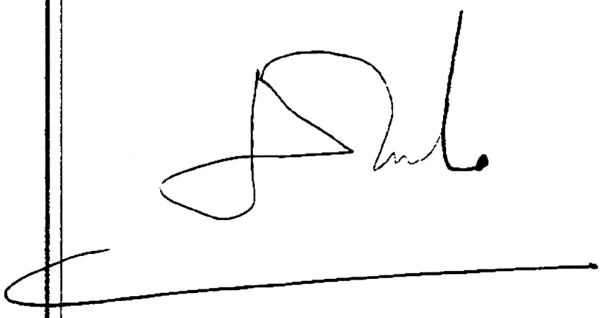
1. This Agreement shall enter into force 60 days from the date of receipt of the last written notification certifying that Viet Nam and the Member States of the Eurasian Economic Union have completed their respective internal legal procedures subject to paragraph 2 of this Article. Exchange of such notifications shall be made between Viet Nam and the Eurasian Economic Commission.

2. Lack of written notification certifying that the Kyrgyz Republic has completed its respective internal legal procedures referred to in paragraph 1 of this Article shall not prevent this Agreement from entry into force between Viet Nam, of the one part, and the Eurasian Economic Union, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, of the other part. This Agreement shall enter into force for the Kyrgyz Republic after 60 days from the date of receipt by Viet Nam of the written notification that the Kyrgyz Republic has completed internal legal procedures necessary for entry into force of this Agreement and not earlier than the entry into force of the Treaty on the Accession of the Kyrgyz Republic to the Treaty on the EAEU of 23 December 2014.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Burabay, this 29th day of May 2015, in two originals in the English language, both texts being equally authentic.

For the Socialist Republic of Viet Nam

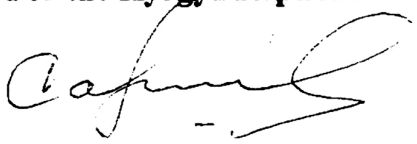


For the Republic of Armenia

For the Republic of Belarus

For the Republic of Kazakhstan

For the Kyrgyz Republic



For the Russian Federation

For the Eurasian Economic Union

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