

**COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT  
BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF SINGAPORE**

**PREAMBLE**

The Republic of India and the Republic of Singapore (“the Parties”),

RECOGNISING their long-standing friendship, strong economic ties and close cultural links;

RECALLING the agreement reached at the meeting on 8<sup>th</sup> April 2002, in Singapore between their respective Prime Ministers to establish a Joint Study Group to examine the benefits of an India-Singapore Comprehensive Economic Cooperation Agreement (“CECA”);

RECALLING the Declaration of Intent signed on 8<sup>th</sup> April 2003, in New Delhi by their respective Ministers in charge of commerce, trade and industry to conclude a CECA;

RECALLING the recommendations in the Joint Study Group Report which served as the framework for negotiations on the CECA and its structure as an integrated package of agreements;

CONSIDERING that the expansion of their domestic markets, through economic integration, is vital for accelerating their economic development;

DESIRING to promote mutually beneficial economic relations;

AIMING to enhance economic and social benefits, improve living standards and ensure high and steady growth in real incomes in their respective territories through the expansion of trade and investment flows;

BUILDING on their respective rights, obligations and undertakings as developing country members of the World Trade Organization, and under other multilateral, regional and bilateral agreements and arrangements;

REAFFIRMING their right to pursue economic philosophies suited to their development goals and their right to regulate activities to realise their national policy objectives;

RECOGNISING that economic and trade liberalisation should allow for the optimal use of natural resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment;

CONSCIOUS that a Comprehensive Economic Co-operation Agreement would contribute to the promotion of closer links with other economies in the South East Asian region;

DESIRING to promote greater regional economic integration and believing that their cooperative framework could serve as a template for future integration with other countries in the South East Asian region;

Have agreed as follows:

## CHAPTER 1

### OBJECTIVES AND GENERAL DEFINITIONS

#### ARTICLE 1.1: GENERAL DEFINITIONS

1. For the purposes of this Agreement:
  - (a) **days** means calendar days, including weekends and holidays;
  - (b) **GATT 1994** means the General Agreement on Tariffs and Trade 1994;
  - (c) **goods** and **products** shall be understood to have the same meaning unless the context otherwise requires;
  - (d)
    - (i) the term **territory** means, in respect of the Republic of Singapore, the territory of the Republic of Singapore as well as the territorial sea and any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise rights with regards to the sea, the sea-bed, the subsoil and the natural resources;
    - (ii) the term **territory** means, in respect of India, the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law;
  - (e) **WTO** means the World Trade Organization.
2. In this Agreement, all words in the singular shall include the plural and all words in the plural shall include the singular, unless otherwise indicated in the context.

#### ARTICLE 1.2: OBJECTIVES

The objectives of this Agreement are:

- (a) to strengthen and enhance the economic, trade and investment cooperation between the Parties;
- (b) to liberalise and promote trade in goods in accordance with Article XXIV of the General Agreement on Trade and Tariffs;

- (c) to liberalise and promote trade in services in accordance with Article V of the General Agreement on Trade in Services, including promotion of mutual recognition of professions;
- (d) to establish a transparent, predictable and facilitative investment regime;
- (e) to improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and investment between the Parties, including joint exploitation of commercial and economic opportunities in non-Parties;
- (f) to explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties;
- (g) to facilitate and enhance regional economic cooperation and integration, in particular, to form a bridge between India and the Association of Southeast Asian Nations (“ASEAN”) region and serve as a pathfinder for the India-ASEAN free trade agreement; and
- (h) to build upon their commitments at the World Trade Organization.

## CHAPTER 2

### TRADE IN GOODS

#### ARTICLE 2.1: DEFINITIONS

For the purposes of this Chapter,

**Anti-Dumping Agreement** means Agreement on Implementation of Article VI of the GATT 1994;

**ATA Carnet Convention** means the Customs Convention on the A.T.A. Carnet For The Temporary Admission Of Goods;

**ATA carnet** has the same meaning as defined in the ATA Carnet Convention;

**customs duties** means duties<sup>2-1</sup> imposed in connection with the importation of a good provided that such customs duties shall not include:

- (a) charges equivalent to internal taxes, including excise duties and goods and services taxes imposed consistently with a Party's WTO obligations;
- (b) any anti-dumping or countervailing duty or safeguard measures applied consistently with provisions of the relevant WTO Agreements;
- (c) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

**domestic industry** means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

**MFN** means "most favoured nation" treatment in accordance with Article I of GATT 1994;

**originating goods** has the same meaning as defined in Chapter 3;

**preferential treatment** means any concession or privilege granted under this Agreement by a Party;

**products** means all products including manufactures and commodities in their raw, semi processed and processed forms;

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<sup>2-1</sup> Customs duties for India refer to basic customs duties as included in the National Customs Schedules of India.

**serious injury** means a significant overall impairment in the position of a domestic industry;

**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

#### ARTICLE 2.2: NATIONAL TREATMENT

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes.

#### ARTICLE 2.3: REDUCTION AND/OR ELIMINATION OF CUSTOMS DUTIES

1. Each Party shall reduce and/or eliminate its customs duties on originating goods of the other Party in accordance with Annex 2A and Annex 2B and their respective headnotes.

2. Upon request by a Party, the Parties shall consult each other to consider the possibility of accelerating the reduction and/or elimination of customs duties as set out in the Annexes referred to in paragraph 1. An agreement by the Parties to accelerate the reduction and/or elimination of customs duties on any goods, shall replace the terms established for those goods in this Article and the Annexes referred to in paragraph 1 in accordance with Article 16.7.

#### ARTICLE 2.4: RULES OF ORIGIN

Products covered by the provisions of this Agreement shall be eligible for preferential treatment provided they satisfy the Rules of Origin as set out in Chapter 3.

#### ARTICLE 2.5: NON TARIFF MEASURES

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any goods of the other Party or on the exportation of any goods destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

2. Each Party shall ensure that such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

#### ARTICLE 2.6: CUSTOMS VALUE

Each Party shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

## ARTICLE 2.7: ANTI-DUMPING

### ARTICLE 2.7.1: NOTIFICATION OF PETITION FOR INVESTIGATION AND EXCHANGE OF INFORMATION

1. The investigating authority of a Party shall, upon accepting a properly documented application for the initiation of an anti-dumping investigation in respect of goods from the other Party, and before proceeding to initiate such anti-dumping investigation, notify the other Party at least 7 working days in advance of the date of initiation of such an investigation.

2. In addition to the usual practice regarding notification in anti-dumping investigations, and without prejudice to Article 16.2, each Party shall, for the purposes of paragraph 1, designate a contact point to which such notification shall be conveyed through electronic means. Both Parties recognise that it may not always be practicable for such notification to include attachments and enclosures referred to therein.

3. A Party whose good is subject to an anti-dumping investigation by the other Party, may, by the due date for the submission of the response to the questionnaire<sup>2-2</sup>, inform, where applicable, the investigating Party that there are no exports of that good to the investigating Party. Such information, together with all relevant information on record, shall be taken into account by the investigating authority of the other Party in its findings.

### ARTICLE 2.7.2: INCOMPLETE INFORMATION

Where the information provided by the exporter or producer under anti-dumping investigation may not be ideal in all respects and provided that the producer or exporter concerned has acted to the best of his ability, the investigating authority of a Party shall, before rejecting the information, use its best endeavours to obtain more complete information for the purposes of the investigation including, where requested, granting a reasonable extension of time to the producer or exporter concerned to make a more detailed and proper response in accordance with the provisions of the Anti-Dumping Agreement.

### ARTICLE 2.7.3: USE OF INFORMATION

1. Where originating goods are subject to an anti-dumping investigation, the export price of such goods before adjustment for fair comparison in accordance with Article 2.4 of the Anti-Dumping Agreement shall, subject to paragraph 2, be based on the value which appears in relevant documents, including the Certificate of Origin for the goods.

2. In cases where the investigating authority of a Party determines that the value referred to in paragraph 1 is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed in accordance with Article 2.3 of the Anti-Dumping Agreement. In such instances, the investigating authority may rely on other sources of information, in accordance with its practice, to arrive at the export price.

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<sup>2-2</sup> This relates to the questionnaire referred to in Article 6 of the Anti-Dumping Agreement.

ARTICLE 2.7.4: RECOMMENDATIONS OF THE WTO COMMITTEE ON ANTI-DUMPING PRACTICES

Each Party may, in all investigations conducted against goods from the other Party, take into account the recommendations by the WTO Committee on Anti-Dumping Practices.

ARTICLE 2.8: SUBSIDIES

The Parties reaffirm their commitment to abide by the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

ARTICLE 2.9: SAFEGUARDS

ARTICLE 2.9.1: IMPOSITION OF A BILATERAL SAFEGUARD MEASURE

If as a result of the reduction or elimination of a customs duty<sup>2-3</sup> under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms, and under such conditions that the imports of such good from the other Party alone<sup>2-4</sup> constitute a substantial cause of serious injury or threat of serious injury to domestic industry producing a like or directly competitive product such Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
  - (i) The MFN applied rate of customs duty on the good in effect at the time the measure is taken; and

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<sup>2-3</sup> A determination that an originating good is being imported as a result of the reduction/ elimination of a customs duty provided for in this Agreement shall be made only if such reduction / elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement / termination of such reduction/elimination and the increase in imports shall not by itself preclude the determination referred in this footnote. If the increase in imports is demonstrably unrelated to such reduction / elimination, the determination referred in this footnote shall not be made.

<sup>2-4</sup> For purposes of certainty, the Parties understand that a Party is not prevented from initiating a bilateral safeguard measure investigation in the event of a surge of imports from the territory of non-Parties. For further certainty, the Parties understand that bilateral safeguard measures can only be imposed on the other Party when the increase in the import of such goods from that other Party alone constitute a substantial cause of serious injury or threat of serious injury, to domestic industry producing a like or directly competitive product.



- (ii) The MFN applied rate of customs duty on the good in effect on the day immediately preceding the date of the start of the period of investigation; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of customs duty to a level not to exceed the lesser of the MFN applied rate of customs duty that was in effect on the good for the corresponding season immediately preceding the date of the start of the period of investigation.

ARTICLE 2.9.2: CONDITIONS AND LIMITATIONS ON IMPOSITION OF A BILATERAL SAFEGUARD MEASURE

The following conditions and limitations shall apply to an investigation or a measure described in Article 2.9.1:

- (a) a Party shall immediately deliver written notice to the other Party upon:
  - (i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
  - (ii) making a finding of serious injury or threat thereof caused by increased imports; and
  - (iii) taking a decision to apply a safeguard measure;
- (b) in making the notification referred to in paragraph (a), the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the good involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure is also obliged to provide any additional information which the other Party considers pertinent;
- (c) a Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in Article 2.9.3. The Parties shall in such consultations, review, *inter alia*, the information provided under paragraph (b), to determine:
  - (i) compliance with Article 2.9;
  - (ii) whether any proposed measure should be taken; and
  - (iii) the appropriateness of the proposed measure, including consideration of alternative measures;

- (d) a Party shall apply/take the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (e) in undertaking the investigation described in paragraph (d), a Party shall comply with the requirements of Article 4.2(a) and (b) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) and (b) are incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (f) the investigation shall be promptly terminated and no measure taken if imports of the subject good represent less than 2 per cent of market share in terms of domestic sales<sup>2-5</sup> or less than 3 per cent of total imports<sup>2-6</sup>;
- (g) the investigation shall in all cases be completed within one year following its date of initiation;
- (h) no measure shall be maintained:
  - (i) except to the extent and for such time as may be necessary to remedy serious injury and to facilitate adjustment; or
  - (ii) for a period exceeding two years, except that in exceptional circumstances, the period may be extended by up to an additional one year, to a total maximum of three years from the date of first imposition of the measure if the investigating authorities determine in conformity with procedures set out paragraphs (a) through (g), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting;
- (i) no bilateral safeguard measure shall be taken against a particular good while a global safeguard measure in respect of that good is in place; in the event that a global safeguard measure is taken in respect of a particular good, any existing bilateral safeguard measure which is taken against that good shall be terminated;
- (j) upon the termination of the safeguard measure, the rate of duty shall be the rate which would have been in effect but for the action;

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<sup>2-5</sup> Both Parties recognize that the terms “market share in terms of domestic sales” admits of more than one interpretation and agree that there could be different permissible methodologies for making a determination of the *de minimis* based on this parameter. Where the arbitral tribunal finds that the interpretation and methodology used for the determination of the domestic market share in a particular investigation rests on one of those interpretations and permissible methodologies, it shall find the determination to be in conformity with the Agreement.

<sup>2-6</sup> The time frame to be used for calculating the applicable percentages shall be the 12 month period prior to the filing of the petition.

- (k) within 5 years after entry into force of this Agreement, the Parties shall meet to review this Article with a view to determining whether there is a need to maintain any bilateral safeguard mechanism; and
- (l) if the Parties do not agree to remove the bilateral safeguard mechanism during the review pursuant to paragraph (k), they shall thereafter conduct reviews to determine the necessity of a bilateral safeguard mechanism, in conjunction with the review of the Agreement pursuant to Article 16.3.

#### ARTICLE 2.9.3: COMPENSATION

1. The Party proposing to apply a measure described in Article 2.9.1 shall provide to the other Party mutually agreed adequate means of trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within 30 days in the consultations under Article 2.9.2, the Party against whose originating good the measure is applied may take action having trade effects substantially equivalent to the measure applied under this Article. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

2. Such compensation described in paragraph 1 shall not be provided if the measure described in Article 2.9.1 is applied for:

- (a) up to two years; or
- (b) up to three years, and the Party imposing the measure described in Article 2.9.1 provides to the other Party evidence that the industry concerned is adjusting during the period up to the end of the second year respectively.

#### ARTICLE 2.9.4: ADMINISTRATION OF EMERGENCY ACTION PROCEEDINGS

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all safeguard investigation action proceedings.

2. Each Party shall entrust determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

#### ARTICLE 2.9.5: GLOBAL SAFEGUARD MEASURES

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may, to the extent consistent with the obligations under the WTO Agreements, exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

#### ARTICLE 2.10: RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENTS

Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994 shall be incorporated into and made a part of this Agreement, for measures taken for balance of payments purposes for trade in goods.

#### ARTICLE 2.11: MOST-FAVoured NATION TREATMENT

1. This Chapter and Annexes thereto as well as any legal instrument agreed upon by the Parties pursuant to provisions of this Chapter shall be integral parts of this Agreement and shall be binding on the Parties.
2. Except as otherwise provided in this Chapter, this Chapter or any action taken under it shall not affect or nullify the rights and obligations of the Party under existing agreements to which it is already a party.
3. If a Party concludes a preferential agreement with a non-party, subsequent to the signing of this Agreement, it shall, upon request from the other Party, afford adequate opportunity to negotiate for the more favourable concessions and benefits granted therein.

#### ARTICLE 2.12: TARIFF CLASSIFICATION

For the purposes of this Chapter and Chapter 3, the basis for tariff classification would be the Harmonized Commodity Description and Coding System Nomenclature.

#### ARTICLE 2.13: GENERAL AND SECURITY EXCEPTIONS

1. For the purposes of this Chapter, Articles XX and XXI of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to the other Party, or the goods of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers

necessary for the protection of its essential security interests with respect to a non-Party, or goods of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such goods.

#### ARTICLE 2.14: STATE TRADING ENTERPRISES

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994.

#### ARTICLE 2.15: TEMPORARY ADMISSION

1. Each Party shall accept in lieu of its national Customs documents, and as due security for the sums referred to in Article 6 of the ATA Carnet Convention, ATA carnets valid for its territory and issued and used in accordance with the conditions laid down in the ATA Carnet Convention, for temporary admission of:

- (a) professional equipment necessary for representatives of the press or of broadcasting or television organizations for purposes of reporting or in order to transmit or record material for specified programs, cinematographic equipment<sup>2-7</sup> necessary in order to make a specified film or films or other professional equipment necessary for the exercise of the calling, trade or profession of a person to perform a specified task;
- (b) goods intended for display or demonstration at an event; and
- (c) goods intended for use in connection with the display of foreign products at an event, including:
  - (i) goods necessary for the purpose of demonstrating foreign machinery or apparatus to be displayed,
  - (ii) construction and decoration material, including electrical fittings, for the temporary stands of foreign exhibitors,
  - (iii) advertising and demonstration material which is demonstrably publicity material for the foreign goods displayed, for example, sound recordings, films and lantern slides, as well as apparatus for use therewith; and
  - (iv) equipment including interpretation apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses.

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<sup>2-7</sup> It would not include equipment which is to be used for internal transport or for the industrial manufacture or packaging of goods or (except in the case of hand-tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects.

2. The facilities referred to in paragraph 1 shall be granted provided that:
- (a) the goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA Carnet duly certified by the customs authorities at the country of exportation;
  - (b) the goods are capable of identification on re-exporting;
  - (c) the number or quantity of identical articles is reasonable having regard to the purpose of importation; and
  - (d) the goods shall be re-exported within three months from the date of importation or such other longer period in accordance with the domestic laws and practices of the Parties.

## CHAPTER 3

### RULES OF ORIGIN

#### SECTION A: DEFINITIONS

##### ARTICLE 3.1: DEFINITIONS

For the purposes of this Chapter:

**carrier** refers to any vehicle for air, sea, and land transport;

**CIF price or CIF value** refers to the price actually paid or payable to the exporter for the good when the good is loaded out of the carrier, at the port of importation. The price value includes the cost of the good, insurance and freight necessary to deliver the good to the named port of destination;

**Customs Valuation Agreement** means the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

**FOB price or FOB value** refers to the price actually paid or payable to the exporter for the good when the good is loaded onto the carrier at the named port of exportation. The value includes the cost of the good and all costs necessary to bring the good onto the carrier;

**generally accepted accounting principles** refers to the recognised consensus or substantial authoritative support in the territory of a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices, and procedures;

**Harmonised System** means the Harmonised Commodity Description and Coding System;

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

**indirect material** means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;

- (b) tools, dies, and moulds;
- (c) parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and

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

**material** means ingredients, raw materials, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good;

**non-originating material used in production** means any material whose country of origin is other than the Parties (imported non-originating) and any material whose origin cannot be determined (undetermined origin);

**originating material** means a material that fulfils the criteria set out in either Article 3.3 or Article 3.4;

**production** means methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

## **SECTION B: ORIGIN DETERMINATION**

### **ARTICLE 3.2: ORIGINATING GOODS**

For purposes of this Agreement, products shall be deemed originating and eligible for preferential treatment if they are consigned according to Article 3.14 and conform to the origin requirement under any of the following conditions:

- (a) Products wholly produced or obtained in the territory of the exporting Party, in accordance with Article 3.3; or
- (b) Products not wholly produced or obtained in the territory of the exporting Party, provided that the said products are eligible under Article 3.4.



### ARTICLE 3.3: WHOLLY OBTAINED OR PRODUCED

For the purposes of this Agreement, goods wholly obtained or produced in the territory of a Party shall be treated as originating goods of that Party. The following goods only shall be considered as being wholly obtained or produced in a Party:

- (a) a raw or mineral good<sup>3-1</sup>/product extracted from its soil, waters, seabed, or beneath the seabed;
- (b) a vegetable good<sup>3-2</sup> harvested or produced there;
- (c) an animal born and raised there;
- (d) a good obtained from animals referred to in (c) above;
- (e) a good obtained from hunting, trapping, fishing or aquaculture conducted there;
- (f) a good of sea fishing and other marine goods taken from outside its territory/territorial waters and Exclusive Economic Zone (EEZ) by vessels registered with a Party and flying its Flag;
- (g) a good processed and/or made on board factory ships registered with a Party and flying its Flag exclusively from products referred to in paragraph (f) above;
- (h) a good taken by a Party, or a person of a Party, from the sea bed or beneath the sea bed outside the territorial waters/sea of that Party, in accordance with the provisions of the United Nations Convention on the Law of the Sea;
- (i) articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials, or for recycling purposes<sup>3-3</sup>; and
- (j) a good produced there exclusively from goods referred to in (a) through (i), or from their derivatives, at any stage of production.

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<sup>3-1</sup> Includes mineral fuels, lubricants and related materials as well as mineral or metal ores.

<sup>3-2</sup> Includes agricultural and forestry products.

<sup>3-3</sup> This would cover all waste and scrap, including waste and scrap resulting from manufacturing or processing operations or consumption in the same Party, scrap machinery, discarded packaging and all products that can no longer perform the purposes for which they were produced and are fit only for disposal for the recovery of parts or raw materials. Such manufacturing or processing operations shall include all types of processing not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

#### ARTICLE 3.4: NOT WHOLLY OBTAINED OR PRODUCED

1. Within the meaning of paragraph (b) of Article 3.2 and subject to the provisions of Articles 3.6, 3.9 and that the final process of manufacturing is performed within the territory of the exporting Party, products would be considered as originating if:

- (a) (i) the total value of the materials, parts or produce originating from countries other than the Parties or of undetermined origin used in the manufacture of the product does not exceed 60% of the FOB value of the product so produced or obtained; and,
- (ii) the product so produced or obtained is classified in a heading, at the four digit level, of the Harmonised System different from those in which all the non-originating materials used in its manufacture are classified; or
- (b) the product satisfies the Product Specific Rules as specified in Annex 3B.

2. For the purposes of calculating the local value added content, either of the following methods can be applied:

- (a) Direct Method

$$\frac{\text{Value of Originating materials} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \% \geq 40\%$$

- (b) Indirect Method

$$\frac{\text{Value of Non-originating materials}^{3-4}}{\text{FOB Price}} \times 100 \% \leq 60\%$$

3. For the purpose of paragraph 2, if the material does not satisfy the requirements of paragraph 1, the non-qualifying value of the materials shall be that proportion which cannot be attributed to one or both of the Parties, provided that the requirements of Article 3.6 at each stage of value accumulation are satisfied.

#### ARTICLE 3.5: INDIRECT MATERIALS

In order to determine whether a product originates in the territory of a Party, any indirect material used to obtain such products shall be treated as originating whether such material originates in third countries or not, and its value shall be the cost registered in the accounting records of the producer of the good.

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<sup>3-4</sup> As defined in Article 3.1.

#### ARTICLE 3.6: INSUFFICIENT OPERATIONS

1. The following operations or processes shall not be considered as sufficient transformation provided for in Article 3.4:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- (b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;
- (c) changes of packing and breaking up and assembly of consignments;
- (d) simple cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (f) simple mixing of products whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Chapter to enable them to be considered as originating products;
- (g) simple assembly of parts of products to constitute a complete product;
- (h) disassembly;
- (i) slaughter of animals;
- (j) mere dilution with water or another substance that does not materially alter the characteristics of the goods; and
- (k) a combination of two or more operations referred to in paragraphs (a) to (j).

#### ARTICLE 3.7: VALUE OF NON-ORIGINATING MATERIALS

The value of a non-originating material used in the production of a good shall be:

- (a) For imported materials, parts or produce, the CIF value at the time of importation determined in accordance with the Agreement on Customs Valuation; and/or

- (b) For materials, parts or produce of undetermined origin, the earliest price as ascertained by the certifying authority to have been paid for in the territory of the Party where the working or processing takes place.

#### ARTICLE 3.8: DETERMINATION OF ORIGIN

No product shall be deemed to be a produce or manufacture of either Party unless the conditions specified in these rules are complied with in relation to such products, to the satisfaction of the authority issuing the certificate of origin.

#### ARTICLE 3.9: ACCUMULATION

1. A product manufactured in one Party and used in the territory of the other Party as a material for the finished product shall be considered as a product originating in the territory of the latter Party provided that it:

- (a) complies with the origin requirements provided for in Articles 3.3 or 3.4; and
- (b) fulfils the criteria in Article 3.6.

2. The origin of the finished product would be determined under Article 3.4.

#### ARTICLE 3.10: ACCESSORIES, SPARE PARTS AND TOOLS

Each Party shall provide that accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts and tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts and tools are not invoiced separately from the good;
- (b) the quantities and value of the accessories, spare parts and tools are standard trade practice for the good in the domestic market of the exporting Party; and
- (c) if the good is subject to a qualifying value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

#### ARTICLE 3.11: TREATMENT OF PACKING

- (a) Packages and packing materials for retail sale:

- (i) Packages and packing materials for retail sale, when classified together with the packaged product, according to General Rule 5(b) of the Harmonised System, shall not be taken into account for considering whether all non-originating materials used in the manufacture of a product fulfil the criterion corresponding to a change of tariff classification of the said product.
  - (ii) If the product is subject to an *ad valorem* percentage criterion, the value of the packages and packing materials for retail sale shall be taken into account in its origin assessment, in case they are treated as being one for customs purposes with the products in question.
- (b) Containers and packing materials for transport:

The containers and packing materials exclusively used for the transport of a product shall not be taken into account for determining the origin of any product, in accordance with General Rule 5(b) of the Harmonised System.

#### ARTICLE 3.12: IDENTICAL AND INTERCHANGEABLE MATERIALS

1. Where identical and interchangeable originating and non-originating materials including materials of undetermined origin are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.

2. A producer facing considerable costs or material difficulties in keeping separate stocks of identical and interchangeable originating and non-originating materials including materials of undetermined origin used in the manufacture of a product, may use the so-called “accounting segregation” method for managing stocks.

3. The accounting method shall be recorded, applied and maintained in accordance with generally accepted accounting principles applicable in the Party in which the product is manufactured. The method chosen must:

- (a) permit a clear distinction to be made between originating and non originating materials including materials of undetermined origin acquired and/or kept in stock; and
- (b) guarantee that no more products receive originating status than would be the case if the materials had been physically segregated.

4. The producer using this facilitation shall only complete origin declarations for the quantity of products considered as originating and shall assume full responsibility for the origin declarations and for keeping all documentary evidence of origin of the materials. At the request of the competent authorities of the exporting Party, the producer shall provide satisfactory information on how the stocks have been managed.

5. A Party may require that the application of the method for managing stocks as provided for in this Article is subject to prior authorisation.

#### ARTICLE 3.13: ADVANCE RULINGS

1. Each Party shall provide for the issuance of written advance rulings, prior to the importation of a good into its territory, to an importer of the good in its territory or to an exporter or producer of the good in the exporting party, as to whether the good qualifies as an originating good. The importing Party may request, at any time during the course of evaluating the request for an advance ruling, additional information necessary to evaluate the request. The importing party shall issue its determination regarding the origin of the good within 120 days after receipt of all necessary information.

2. The importing Party shall apply an advance ruling to importation into its territory of the good for which the ruling was issued, for such period, which may be specified in the ruling.

3. The importing Party may modify or revoke an advance ruling:

- (a) if the ruling was based on an error of fact;
- (b) if there is a change in the material facts or circumstances on which the ruling was based; or
- (c) to conform with a modification of this Chapter.

4. Where the importing Party modifies or revokes an advance ruling, such modification or revocation shall only take effect 60 days after the date on which the modification or revocation is issued, and shall not apply to importation of a good that has occurred prior to the effective date.

5. Notwithstanding paragraphs 3 and 4 above, the importing Party may revoke any advance ruling *ab initio*, if the importer or exporter to whom the advance ruling was issued had provided false or incorrect information pursuant to the application for the ruling.

6. Apart from the advance ruling being revoked *ab initio*, the person who had provided the false or incorrect information shall also be liable to appropriate penalties under the domestic laws of the respective Parties.

#### ARTICLE 3.14: CONSIGNMENT CRITERIA

The originating goods of the other Party shall be deemed to meet the consignment criteria when they are:

- (a) transported directly from the territory of the other Party; or
- (b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, and the products have not entered into trade or consumption there, provided that

- (i) they do not undergo operations other than unloading, reloading or operations to preserve them in good condition; or
- (ii) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements.

## **SECTION C: DOCUMENTATION REQUIREMENTS**

### **ARTICLE 3.15: CERTIFICATE OF ORIGIN**

Products eligible for preferential concessions shall be supported by a Certificate of Origin issued by a government authority designated by the government of the exporting Party and notified to the other Party (referred to herein as “the certifying authority”) in accordance with the Operational Certification Procedures, as set out in Annex 3B.

## **SECTION D : VERIFICATION OF ORIGIN**

### **ARTICLE 3.16: CO-OPERATION ON VERIFICATION OF CERTIFICATES OF ORIGIN**

1. The Parties shall co-operate with each other to verify the authenticity and the correctness of the information given in the certificates of origin.
2. For the purpose of implementing the provisions of paragraph 1, the customs administration of the importing Party shall return the certificate of origin, or a copy of the document, to the certifying authority of the exporting Party, giving the reason for the enquiry. Any document and/or information obtained suggesting that the information given on the certificate of origin is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the certifying authority of the exporting Party.

### **ARTICLE 3.17: DENIAL OF PREFERENTIAL TARIFF TREATMENT**

1. Export of consignments accompanied by an authentic Certificate of Origin will not be subjected to any detention or delays by the Customs Authorities of the importing country.
2. In case of reasonable doubt about the authenticity of Certificate of Origin, the Customs authority of the importing country may seek a clarification from the certifying authority of the exporting country, which will furnish the same within a period of 30 days. Meanwhile, the subject consignment will be allowed entry into the importing country on a provisional basis against a bond or a guarantee i.e. a legally binding undertaking as may be required. After examining the information so provided by the

certifying authority, the Customs Authority in the importing country would take appropriate action to finalise the provisional assessment.

3. Where the clarification carried on in above paragraph 2 is not conclusive, the importing Party may, upon informing the exporting Party and with the knowledge of the importer concerned and with the consent of the exporter or manufacturer concerned, visit the exporter or manufacturer concerned for the purpose of verifying the preference claim. If no consent is given by the exporter or manufacturer concerned within a period of 45 days, the importing party may disallow the tariff preference for the particular Certificate of Origin.

## **SECTION E : CONSULTATION AND MODIFICATIONS**

### **ARTICLE 3.18: CONSULTATION AND MODIFICATIONS**

These rules may be reviewed as and when necessary upon the request of either Party and may be modified by mutual agreement pursuant to Article 16.7.



## CHAPTER 4

### CUSTOMS

#### ARTICLE 4.1: SCOPE

This Chapter shall apply, in accordance with the Parties' respective national laws, rules and regulations, to customs procedures required for clearance of goods traded between the Parties.

#### ARTICLE 4.2: TRANSPARENCY

1. The Parties shall promptly publish or otherwise make publicly available their laws, regulations, administrative procedures and administrative rulings of general application on respective customs matters that pertain to or affect the operation of this Chapter, so as to enable interested persons and parties to become acquainted with them.
2. Nothing in this Article or in any part of this Chapter shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

#### ARTICLE 4.3: RISK MANAGEMENT

1. A Party shall adopt the risk management approach in its customs activities based on its identified risk of goods in order to facilitate the clearance of low risk consignments, while focusing its inspection activities on high-risk goods. Accordingly, each Party undertakes that customs compliance activities at the time of entry shall not normally exceed 5 per cent of total customs transactions.
2. The Parties shall apply and further develop risk management techniques in the performance of their customs compliance activities.
3. The Parties shall exchange information on risk management techniques in the performance of their customs procedures.

#### ARTICLE 4.4: PAPERLESS TRADING

1. Recognising that trading using electronic filing and transfer of trade-related information and electronic versions of documents, as an alternative to paper-based methods will significantly enhance the efficiency of trade through reduction of cost and time, the Parties shall co-operate with a view to realising and promoting paperless trading between their respective customs administrations and its respective trading community.

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

#### ARTICLE 4.5: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. The importing Party may deny preferential tariff treatment to a good for which an importer in its territory claims preferential tariff treatment where the good does not meet the requirements of Chapter 3 or where the importer fails to comply with any of the relevant requirements of Chapter 3.

2. Where the denial of preferential treatment is due to the signature that appears in the Certificate of Origin, the Importing Party may accept a clarification letter from the exporting Party confirming the authenticity of Certificate of Origin. Such clarification letter may be issued directly from the exporting Party to the importing Party or through the exporter of the good.

3. Export of consignments accompanied by an authentic Certificate of Origin will not be subjected to any detention or delays by the Customs Authorities of the importing country.

4. In case of reasonable doubt about the authenticity of a Certificate of Origin, the Customs Authority of the importing country may seek a clarification from the certifying agency of the exporting country which will furnish the same within a period of 30 days. Meanwhile, the subject consignment will be allowed entry into the importing country on a provisional basis against a bond or a guarantee i.e. a legally binding undertaking as may be required. After examining the information so provided by the certifying authority, the Customs Authority in the importing country would take appropriate action to finalise the provisional assessment.

5. Where the clarification carried on in paragraph 4 is not conclusive, the importing Party may, upon informing the exporting Party and with the knowledge of the importer concerned and with the consent of the exporter or manufacturer concerned, visit the exporter or manufacturer concerned for the purpose of verifying the preference claim. If no consent is given by the exporter or manufacturer concerned within a period of 45 days, the importing party may disallow the tariff preference for the particular Certificate of Origin.

#### ARTICLE 4.6: VERIFICATION OF CERTIFICATES OF ORIGIN

1. The Parties shall co-operate with each other to verify the authenticity and the correctness of the information given in the certificates of origin.

2. For the purpose of implementing the provisions of paragraph 1, the customs administration of the importing Party shall return the certificate of origin, or a copy of the document, to the customs authority of the exporting Party, giving the reason for the enquiry. Any document and/or information obtained suggesting that the information given on the certificate of origin is incorrect shall be forwarded in support of the request for verification.

3. The verification shall be carried out by the customs authorities of the exporting Party.

#### ARTICLE 4.7: ADVANCE RULINGS

The Parties shall apply Advance Rulings in accordance with the provisions of Article 3.13.

#### ARTICLE 4.8: SHARING OF BEST PRACTICES

1. The Customs Administrations of both Parties shall endeavor to use their best efforts to provide each other technical advice for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures and enhancing customs clearance.

2. The Customs Administrations of both Parties shall endeavor, within their respective available resources, to actively encourage exchange of information on best practices on customs procedures and techniques with the aim of enhancing each other's capacity.

#### ARTICLE 4.9: CONFIDENTIALITY

Nothing in this Chapter shall require a Party to provide or allow access to information:

- (a) the disclosure of which would impede law enforcement or otherwise be contrary to the public interest; or
- (b) the disclosure of which would prejudice the legitimate commercial interest of a particular enterprise, public or private.

## CHAPTER 5

### STANDARDS AND TECHNICAL REGULATIONS, SANITARY AND PHYTOSANITARY MEASURES

#### ARTICLE 5.1: SCOPE

1. Consistent with the objectives set out in Chapter 1 and the provisions of this Chapter, and reflecting the level of confidence that each Party has in the other Party's regulatory outcomes and conformity assessment systems, each Party shall implement the principles of mutual recognition that provide the most appropriate or cost-efficient approach to the removal or reduction of technical, sanitary and phytosanitary barriers (hereinafter referred to as "regulatory barriers") to the trade in goods between the Parties for products and/or assessments of manufacturers/manufacturing processes of products specified in the Sectoral Annexes to this Chapter.

2. For the purposes of this Chapter, **mutual recognition** means that each Party, on the basis that it is accorded reciprocal treatment by the other Party:

- (a) accepts the test reports of conformity assessment activities of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter i.e. mutual recognition of test reports;
- (b) accepts the certification of results of conformity assessment activities of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter i.e. mutual recognition of certification of conformity assessment;
- (c) accepts the mandatory requirements of a Party as producing outcomes equivalent to those produced by the other Party's corresponding but different mandatory requirements, with both meeting the legitimate objective or achieving the appropriate level of sanitary or phytosanitary protection of the mandatory requirements applied in the territory of the latter Party; i.e. mutual recognition of equivalence of mandatory requirements.

#### ARTICLE 5.2: DEFINITIONS

1. All general terms concerning standards and conformity assessment used in this Chapter shall have the meaning given in the definitions contained in the International Organisation for Standardisation/International Electrotechnical Commission (ISO/IEC)

Guide 2: 2004 "Standardization and related activities – General vocabulary" published by the ISO and IEC, unless the context otherwise requires and as appropriate.

2. For the purposes of this Chapter, and its Sectoral Annexes, unless a more specific meaning is given in the specified Sectoral Annexes:

**accept** means the use of the results of conformity assessment activities as a basis for regulatory actions such as approvals, licences, registrations and post-market assessments of conformity assessment;

**acceptance** has an equivalent meaning to **accept**;

**certification body** means a body, including product or quality systems certification bodies, that may be designated by a Party in accordance with this Chapter to conduct certification on compliance with its or the other Party's standardisation and/or specifications to meet relevant mandatory requirements;

**confirmation** means the confirmation of the compliance of the manufacturing or test facility with the criteria for confirmation by a Competent Authority of a Party pursuant to the mandatory requirements of the other Party;

**competent authority** means an authority of a Party with the power to conduct inspection or audits on facilities in its territory to confirm their compliance with the mandatory requirements of the other Party;

**conformity assessment** means any activity concerned with determining directly or indirectly whether products, manufacturers or processes fulfil relevant standards and/or specifications to meet relevant mandatory requirements set out in the respective Party's mandatory requirements. The typical examples of conformity assessment activities are sampling, testing, inspection, evaluation, verification, certification, registration, accreditation and approval, as well as their combinations;

**conformity assessment body** means a body that conducts conformity assessment activities;

**designation** means the authorisation by a Party's designating authority of its conformity assessment body to undertake specified conformity assessment activities pursuant to the mandatory requirements of the other Party;

**designate** has an equivalent meaning to **designation**;

**Designating Authority** means a body established in the territory of a Party with the authority to designate, monitor, suspend or withdraw designation of conformity assessment bodies to conduct conformity assessment activities within its jurisdiction in accordance with the other Party's mandatory requirements;

**inspection** means conformity evaluation by observation and judgement accompanied as appropriate by measurement, testing or gauging, unless otherwise specified in the Sectoral Annex;

**inspection body** means a body that performs inspection;

**mandatory requirements** means a Party's applicable laws, regulations and administrative provisions;

**registered conformity assessment body** means a body registered pursuant to Article 5.5;

**registration** means the authorisation by a Party's Designating Authority of a conformity assessment body of the other Party to undertake specified conformity assessment activities pursuant to its mandatory requirements;

**regulatory authority** means an entity that exercises a legal right to determine the mandatory requirements, control the import, use or supply of products within a Party's territory and may take enforcement action to ensure that products marketed within its territory comply with that Party's mandatory requirements including assessments of manufacturers/ manufacturing processes of products;

**sanitary or phytosanitary measure** shall have the same meaning as in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;

**Sectoral Annex** is an annex to this Chapter which specifies the implementation arrangements in respect of a specific product sector;

**stipulated requirements** means the criteria set out in a Sectoral Annex for the designation of a Conformity Assessment Body;

**technical regulations** shall have the same meaning as in the WTO Agreement on Technical Barriers to Trade;

**test facility** means a facility, including independent laboratories, manufacturers' own test facilities or government testing bodies, that may be designated by one Party's Designating Authority in accordance with this Chapter to undertake tests to the other Party's mandatory requirements; and

**verification** means an action to verify in the territories of the Parties, by such means as audits or inspections, compliance with the stipulated requirements for designation or criteria for confirmation by a conformity assessment body or a manufacturing or test facility respectively.

#### ARTICLE 5.3: GENERAL OBLIGATIONS

1. This Chapter shall apply to the mandatory requirements adopted or maintained by the Parties to fulfil their legitimate objectives and/or achieve their appropriate level of sanitary or phytosanitary protection.

2. Each Party shall accept, in accordance with the provisions of this Chapter, the test reports and/or results of conformity assessment activities stipulated by the mandatory requirements of that Party specified in the relevant Sectoral Annex, including certificates

and marks of conformity, that are conducted by the registered conformity assessment bodies of the other Party.

3. For the purposes of this Article, a Sectoral Annex shall include:
  - (a) inter alia, provisions on scope and coverage;
  - (b) applicable laws, regulations and administrative provisions i.e. mandatory requirements of each Party concerning the scope and coverage;
  - (c) applicable laws, regulations and administrative provisions of each Party stipulating the requirements covered by this Chapter, all the conformity assessment activities covered by this Chapter to satisfy such requirements and the stipulated requirements for designation of conformity assessment bodies or the applicable laws, regulations and administrative provisions of each Party stipulating the criteria for confirmation of the manufacturing or test facilities covered by this Chapter; and
  - (d) the list of Designating Authorities or Competent Authorities.
4. The Parties shall, where appropriate, endeavour to work towards harmonisation of their respective mandatory requirements taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

#### ARTICLE 5.4: APPLICATION

This Chapter applies to all products and/or assessments of manufacturers or manufacturing processes of products traded between the Parties, regardless of the origin of those products, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirements of a Party.

#### ARTICLE 5.5: MUTUAL RECOGNITION OF CONFORMITY ASSESSMENT

##### **Scope**

1. This Article shall apply to the conformity assessment bodies and conformity assessment activities for products as may be specified in the Sectoral Annexes.

##### **Obligations**

2. In accordance with Article 2.4 of the WTO Agreement on Technical Barriers to Trade, where technical regulations are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for their mandatory requirements except when such international standards or relevant parts of them would be an ineffective or inappropriate means for the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

3. A Party shall accept the test reports and/or the results of conformity assessment activities to demonstrate conformity of products with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by the Designating Authority of the other Party and registered by the first mentioned Party's Designating Authority in accordance with this Chapter.

### **Designating Authorities**

4. Each Party shall notify the other of any scheduled changes concerning their Designating Authorities, and ensure that their Designating Authorities:

- (a) have the necessary power to designate, monitor (including verification), withdraw the designation of, suspend the designation of and withdraw the suspension of the designation of the conformity assessment bodies that conduct conformity assessment activities within its territory based upon the requirements set out in the other Party's mandatory requirements as specified in the relevant Sectoral Annex; and
- (b) consult, as necessary, with the relevant counterparts of the other Party to ensure the maintenance of confidence in conformity assessment activities including processes and procedures. The consultations may include joint participation in audits related to conformity assessment activities or other assessments of registered conformity assessment bodies, where such participation is appropriate, technically possible and within reasonable cost.

### **Registration of Conformity Assessment Bodies**

5. The following procedures shall apply to the registration of a conformity assessment body:

- (a) each Party shall make a proposal that a conformity assessment body of that Party designated by its Designating Authority be registered under this Chapter, by presenting its proposal in writing, supported by the necessary documents, to the Designating Authority of the other Party;
- (b) the Designating Authority of the other Party shall consider whether the proposed conformity assessment body complies with the stipulated and mandatory requirements specified in the relevant Sectoral Annex and communicate, to the Designating Authority of the other Party in writing, its decision regarding the registration of that conformity assessment body along with date of registration within 90 days from the date of receipt of the proposal referred to in paragraph (a) above; and
- (c) in the event of any disagreement over the registration, either Party may refer the matter to the Mutual Recognition Joint Committee for resolution.



6. The proposing Party shall provide the following information in its proposal for registration of a conformity assessment body and keep such information up to date:

- (a) the name and address of the conformity assessment body;
- (b) the products or processes the conformity assessment body is designated to assess;
- (c) the conformity assessment activities the conformity assessment body is designated to conduct; and
- (d) the designation procedure and necessary information used to determine the compliance of the conformity assessment body with the stipulated requirements.

7. Each Party shall ensure that its Designating Authority withdraws the designation of a conformity assessment body registered by the Designating Authority of the other Party when its Designating Authority considers that the conformity assessment body no longer complies with the stipulated and mandatory requirements set out in the relevant Sectoral Annex. The withdrawal of the designation shall be notified in writing to the Designating Authority of the other Party. Each Party shall terminate the registration of a conformity assessment body when the Designating Authority of the other Party withdraws the designation of its conformity assessment body. The date of termination of registration of the conformity assessment body shall be the date of receipt of notification for withdrawal from the other Party.

8. A Party shall propose the termination of the registration of a conformity assessment body when that Party considers that the conformity assessment body no longer complies with the stipulated and mandatory requirements of that Party specified in the relevant Sectoral Annex. Proposal for terminating the registration of that conformity assessment body shall be made to the Designating Authority of the other Party in writing.

9. In the case of registration of a new conformity assessment body, the other Party shall accept the results of conformity assessment activities conducted by that conformity assessment body from the date of the registration. In the event that the registration of a conformity assessment body is terminated, the other Party shall accept the results of the conformity assessment activities conducted by that conformity assessment body prior to the termination, without prejudice to paragraphs 16 and 17.

10. Each Party shall notify the other Party of any scheduled changes concerning its designated conformity assessment bodies.

11. The Parties shall publish, on a sector-by-sector basis, their respective lists of registered conformity assessment bodies.

### **Verification and Monitoring of Conformity Assessment Bodies**

12. Each Party shall ensure that its Designating Authorities shall:

- (a) through appropriate means such as audits, inspections or monitoring, ensure that its designated conformity assessment bodies fulfil the stipulated and mandatory requirements set out in the Sectoral Annex. When applying the stipulated requirements for designation of the conformity assessment bodies, the Designating Authorities of a Party should take into account the bodies' understanding of and experience relevant to the mandatory requirements of the other Party;
- (b) monitor and verify that the designated conformity assessment bodies, maintain the necessary technical competence to demonstrate the conformity of a product with the standards, and/or specifications to meet the mandatory requirements of the other Party. This shall include participation in appropriate proficiency-testing programmes and other comparative reviews such as non government-to-government mutual recognition agreements, so that confidence in their technical competence to undertake the required conformity assessment is maintained;
- (c) exchange information concerning the procedures used to ensure that the designated conformity assessment bodies are technically competent and comply with the relevant stipulated requirements; and
- (d) compare methods used to verify that the registered conformity assessment bodies comply with the relevant stipulated requirements.

13. When in doubt, a Party may request the other Party, in writing, to clarify whether a registered conformity assessment body complies with the stipulated requirements for designation as set out in the mandatory requirements in the Sectoral Annex, and may request for a verification to be conducted of the conformity assessment body's activities in accordance with the first mentioned Party's mandatory requirements.

14. Either Party may, upon request, participate as an observer, at its own expense, in the verification of conformity assessment bodies conducted by the Designating Authorities of the other Party, with the prior consent of such conformity assessment bodies, in order to maintain a continuing understanding of the other Party's procedures for verification.

15. Each Party should encourage its conformity assessment bodies to co-operate with the conformity assessment bodies of the other Party.

### **Suspension and Withdrawal of Suspension of Designation of Conformity Assessment Bodies**

16. In case of suspension of the designation of a registered conformity assessment body, the Party whose Designating Authority has suspended the designation shall immediately notify the other Party to that effect. The registration of that conformity assessment body shall be suspended from the date of receipt of the notification by the Designating Authority of the other Party. The other Party shall accept the results of the conformity assessment activities conducted by that conformity assessment body prior to the suspension of the designation.

17. In the case of lifting of suspension of the designation of a registered conformity assessment body, the Designating Authority which has lifted the suspension of the designation shall immediately notify the Designating Authority of the other Party to that effect. The lifting of suspension of the registration of that conformity assessment body shall be effective from the date of receipt of the notification by the Designating Authority of the other Party. The other Party shall accept the results of the conformity assessment body from the date of lifting of the suspension of the registration.

### **Challenge**

18. Each Party shall have the right to challenge a registered conformity assessment body's technical competence and compliance with the relevant stipulated requirements. This right shall be exercised only in exceptional circumstances and where supported by relevant expert analysis or evidence. A Party shall exercise this right by notifying the other Party and the Mutual Recognition Joint Committee in writing. Such notification shall be accompanied by the supporting expert analysis or evidence.

19. Except in urgent circumstances, the Parties shall, prior to a challenge under paragraph 18, enter into consultations with a view to seeking a mutually satisfactory solution. In case the consultations do not produce a satisfactory solution and the Parties exercise the right to challenge, the registration of the conformity assessment body shall be suspended immediately. The date of suspension shall be the date of receipt of the written notification pursuant to paragraph 18.

20. In urgent circumstances, the Party shall suspend the registration of the conformity assessment body as soon as the right of challenge has been exercised.

21. Pursuant to paragraph 19, the consultations shall take place expeditiously with a view to resolving all issues and seeking a mutually satisfactory solution within 20 days following the date on which a challenge is received by the other Party or within the period so specified in the Sectoral Annex.

22. If a mutually satisfactory solution is not reached, the Mutual Recognition Joint Committee shall be convened at the earliest to resolve the matter. Unless the Mutual Recognition Joint Committee decides otherwise, the registration of the challenged conformity assessment body shall be suspended by the relevant Designating Authority for the relevant scope of designation from the date its technical competence or compliance is challenged, until either:

- (a) the challenging Party is satisfied as to the competence and compliance of the conformity assessment body; or
- (b) the designation of that conformity assessment body has been withdrawn; or
- (c) the Mutual Recognition Joint Committee decides to lift the suspension of the registration of the conformity assessment body.

23. The Sectoral Annex may provide for additional procedures such as verification and time limits. This may involve the Mutual Recognition Joint Committee being

activated. Where the Mutual Recognition Joint Committee decides to conduct a joint verification, it will be conducted in a timely manner by the Parties with the participation of the Designating Authority that designated the contested conformity assessment body and with the prior consent of the conformity assessment body. The result of such joint verification shall be discussed in the Mutual Recognition Joint Committee with a view to resolving the issue within the time limit specified in the Sectoral Annex.

24. The results of conformity assessment activities undertaken by a challenged conformity assessment body on or before the date of its suspension or withdrawal shall remain valid for acceptance for the purposes of paragraph 3.

#### ARTICLE 5.6: GOOD MANUFACTURING PRACTICES (GMP)

1. The provisions of this Article apply to assessments of manufacturers or manufacturing processes of products, and their mandatory requirements as may be specified in the relevant Sectoral Annexes.

##### **Obligations**

2. In accordance with Article 2.4 of the WTO Agreement on Technical Barriers to Trade, where technical regulations are required and relevant international standards exist or their completion is imminent, the Parties shall use them, or the relevant parts of them, as a basis for their mandatory requirements except when such international standards or relevant parts of them would be an ineffective or inappropriate means for the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

3. A Party shall accept the test reports and/or the results of conformity assessment activities to demonstrate conformity of manufacturers or manufacturing processes of products with its mandatory requirements when the conformity assessment activities are undertaken by Inspection Body designated by the other Party's Designating Authority and registered by the first mentioned Party's Designating Authority in accordance with this Chapter.

#### ARTICLE 5.7: EQUIVALENCE OF MANDATORY REQUIREMENTS

1. The Parties shall give favourable consideration to accepting the equivalence of each other's mandatory requirements consistent with the purpose of this Chapter and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

2. A Party shall accept the equivalence of the mandatory requirements, and/or results of conformity assessment and approval procedures, of the other Party as set out in the respective Sectoral Annex.

3. For the purposes of paragraph 2, a Sectoral Annex shall provide the following details, as applicable:

- (a) the procedures for determining and implementing the equivalence of each Party's mandatory requirements; and/or
- (b) the procedures for accepting the results of the conformity assessment and approval procedures; and
- (c) the regulatory authorities designated by each Party.

#### ARTICLE 5.8: JOINT COMMITTEE ON MUTUAL RECOGNITION

1. A Joint Committee on Mutual Recognition ("Mutual Recognition Joint Committee") shall be established as a body responsible for the effective implementation of this Chapter.

2. The Mutual Recognition Joint Committee shall be led by co-chairs from both Parties. It shall comprise an equal number of senior representatives from both Parties with an understanding of this Chapter, its objectives and application and with the relevant expertise.

3. A representative:

- (a) may be accompanied by advisers at meetings of the Mutual Recognition Joint Committee; and
- (b) shall not hold a position which may give rise to a conflict of interest.

4. The Mutual Recognition Joint Committee shall:

- (a) be responsible for administering and facilitating the effective functioning of this Chapter and the Sectoral Annexes including:
  - (i) facilitating the extension of this Chapter, including the addition of new Sectoral Annexes or an increase in the scope of existing Sectoral Annexes;
  - (ii) resolving any questions or disputes relating to the application of this Chapter and its Sectoral Annexes;
  - (iii) resolving disagreement over registration with reference to paragraph 5(c) of Article 5.5, lifting of suspension of registration of a conformity assessment body with reference to paragraphs 22(c) and 23 of Article 5.5;
  - (iv) establishing appropriate modalities of information exchange referred to in this Chapter;
  - (v) appointing experts from each Party for joint verification when needed; and
  - (vi) discharging such other functions as provided for in this Chapter;

- (b) be the contact point for the Parties unless otherwise specified in the relevant Sectoral Annexes;
- (c) determine its own rules of procedure;
- (d) make its decisions and adopt its recommendations by consensus; and
- (e) meet as and when required for the discharge of its functions, including upon the request of either Party.

5. In case any problem arising from the interpretation or application of this Chapter is not resolved through mutual consultations, the Parties shall seek an amicable solution through the Mutual Recognition Joint Committee.

6. The Mutual Recognition Joint Committee may establish ad hoc groups to undertake specific tasks, where necessary.

7. Any decision made by the Mutual Recognition Joint Committee shall be notified promptly in writing to each Party.

8. The Parties shall bring into effect the relevant decisions of the Mutual Recognition Joint Committee. Where any problem arising from the interpretation or application of this Chapter is not resolved through mutual consultations, the Parties shall seek an amicable solution through the Mutual Recognition Joint Committee before making a request for an arbitral tribunal under Article 15.5.

#### ARTICLE 5.9 : EXCHANGE OF INFORMATION AND COOPERATION

1. The Parties shall provide notification of any changes to their mandatory requirements in accordance with their WTO obligations. In exceptional cases where considerations of health, safety or environmental protection warrant more urgent action, each Party shall notify the other Party of changes within the time period set out in the relevant Sectoral Annex or if no time period is specified, at least 60 days before the changes enter into force.

2. The Parties shall, for the purposes of this Chapter, establish contact points to expeditiously:

- (a) broaden the exchange of information; and
- (b) give favourable consideration to any written request for consultation.

3. The Parties should endeavour to develop a work programme and mechanisms for co-operation activities in the areas of technical issues of mutual interest.

#### ARTICLE 5.10: CONFIDENTIALITY

1. A Party shall not be required to disclose confidential proprietary information to the other Party except where such disclosure would be necessary for the other Party to demonstrate the technical competence of its designated conformity assessment body and conformity with the relevant stipulated requirements.
2. A Party shall, in accordance with its applicable laws, protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment activities and/or designation activities.
3. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:
  - (a) be contrary to its essential security interests;
  - (b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;
  - (c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
  - (d) impede law enforcement; or
  - (e) prejudice legitimate commercial interests of particular public or private enterprises.

#### ARTICLE 5.11: PRESERVATION OF REGULATORY AUTHORITY

1. Each Party retains all authority under its laws to interpret and implement its mandatory requirements.
2. This Chapter shall not:
  - (a) prevent a Party from adopting or maintaining, in accordance with its international rights and obligations, mandatory requirements, as appropriate to its particular national circumstances;
  - (b) prevent a Party from adopting mandatory requirements to determine the level of protection it considers necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate.
  - (c) limit the authority of a Party to take all appropriate measures whenever it ascertains that products may not conform with its mandatory requirements. Such measures may include withdrawing the products from

the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, initiating legal proceedings or otherwise preventing the recurrence of such problems including through a prohibition on imports. If a Party takes such measures, it shall notify the other Party within 15 days of taking the measures, giving its reasons;

- (d) oblige a Party to accept the standards or technical regulations or mandatory requirements of the other Party;
- (e) entail an obligation upon a Party to accept the results of the conformity assessment activities and/or assessment of manufacturers or manufacturing processes of products and their mandatory requirements of any third country save where there is an expressed agreement between the Parties to do so; or
- (f) be construed so as to affect the rights and obligations of either Party as a member of the WTO Agreement on Technical Barriers to Trade or WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

#### ARTICLE 5.12: FINAL PROVISIONS ON SECTORAL ANNEXES

1. Sectoral Annexes are attached to this Agreement as Annex 5A, Annex 5B and Annex 5C which shall provide the detailed implementing arrangements in respect of the product sectors specified therein.

2. In addition, the Parties may subsequently conclude as appropriate, Sectoral Annexes on other product sectors which shall provide the implementing arrangements for such other sectors.

3. The Parties shall:

- (a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;
- (b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes;
- (c) notify each other of any scheduled changes in their respective mandatory requirements as and when they are made; and
- (d) notify each other of any scheduled changes concerning their respective Designating Authorities as well as registered conformity assessment bodies.

4. Unless otherwise provided for, a Sectoral Annex concluded pursuant to paragraph 2 shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.



5. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six months advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the six-month notice period.

6. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.

## CHAPTER 6

### INVESTMENT

#### ARTICLE 6.1: DEFINITIONS

For the purposes of this Chapter:

1. **investment** means every kind of asset and includes:-
  - (a) movable and immovable property and other property rights such as mortgage, liens or pledges;
  - (b) shares, stocks, debentures and similar interests in companies;
  - (c) rights to money or to any performance under contract having a financial value;
  - (d) intellectual property rights
  - (e) goodwill, technical processes and know-how as conferred by law or under contract;
  - (f) business concessions conferred by law or under contract, including concessions to search for, extract or exploit oil and other minerals and other natural resources.
2. For the purposes of paragraph 1, returns that are invested shall be treated as investments and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.
3. **returns** means monetary returns yielded by or derived from an investment including any profits, interest, capital gains, dividends, royalties, fees, or payments in connection with intellectual property rights.
4. **investor of a Party** means:
  - (a) an enterprise of a Party; or
  - (b) a national of a Partythat has made or is in the process of making or is seeking to make an investment;
5. **national** means any natural person possessing the citizenship of a Party in accordance with its laws.

6. **enterprise** means any entity that is incorporated, constituted, set up or otherwise duly organized under the law of a Party<sup>6-1</sup>, whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship. An enterprise shall not include any legal entity, which is established and located in the territory of a Party with negligible or nil business operations or with no real and continuous business activities carried out in the territory of that Party.

7. **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, and includes 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;

#### ARTICLE 6.2: SCOPE OF APPLICATION

1. This Chapter shall apply to investors of a Party, and to their investments in the territory of the other Party whether made before or after the entry into force of this Agreement.

2. An enterprise duly organized under the law of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be covered under this Chapter.

3. The provisions of this Chapter as specified in Article 7.24 shall apply *mutatis mutandis* to the measures affecting the supply of services by a service provider of a Party through commercial presence in the territory of the other Party

4. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

5. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.

#### ARTICLE 6.3: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the establishment, acquisition or expansion of

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<sup>6-1</sup> The provisions of this Chapter, except for the provisions in paragraph 1 of Article 6.3 would be extended to branches of enterprises incorporated under the laws of a non-party, that are registered or set up in the territory of either Party, that are specifically permitted in other Chapters of the Agreement.

investments in the sectors listed at Annex 6A and Annex 6B, treatment no less than that it accords in like circumstances to its own investors and investments. Any subsequent establishment, acquisition or expansion of investments by an enterprise that is incorporated, constituted, set up or otherwise duly organized under the law of a Party, and which is owned by an investor of the other Party, shall be regarded as an investment of the other Party, for the purpose of determining the applicable treatment to be accorded under this paragraph<sup>6-2</sup>.

2. Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the management, conduct, operation, liquidation, sale and transfer (or other disposition) of investments, treatment no less favourable than it accords in like circumstances to its own investors and investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional or local level, treatment no less favourable than the most favourable treatment accorded by that regional and local level, in like circumstances, to investors and investments of the Party of which it forms a part.

4. The provisions of paragraphs 1, 2, 3 above shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from any arrangement or international agreement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

#### ARTICLE 6.4: COMPENSATION FOR LOSSES

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, a state of emergency or civil disturbances in the territory of the latter Party, shall be accorded by that Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which that Party accords to its own investors or to investors of any non-Party. Any payments under this Article shall be freely transferable.

#### ARTICLE 6.5: EXPROPRIATION

1. Neither Party shall take any measure of expropriation<sup>6-3</sup> against the investments of investors of the other Party unless the measures are taken on a non-discriminatory basis, for a purpose authorized by law, in accordance with due process of law and against payment of compensation in accordance with this Article.

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<sup>6-2</sup> The Parties understand that such enterprises shall be entitled to be accorded any better treatment which is available under the regime of that Party, at the time of such subsequent establishment, acquisition and expansion of investments. Any such better treatment accorded shall not be construed as an automatic addition to the commitments scheduled in the Parties' respective Schedules of Specific Commitments in Annex 6A and Annex 6B.

<sup>6-3</sup> The term "expropriation" includes "nationalisation".

2. The payment of compensation shall be prompt, adequate and effective. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realizable, freely transferable and made promptly.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

4. The investor whose investment is expropriated shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek review of the expropriation measure or valuation of the compensation that has been assessed in accordance with the principles and provisions set out in this Article.

5. When a Party expropriates the assets of an enterprise which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Party own shares, it shall ensure that the provisions of paragraph 1 and 2 are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Party who are owners of those shares.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

7. This Article is to be interpreted in accordance with the understanding of the Parties on expropriation as set out in their exchange of letters, which shall form an integral part of this Agreement.

#### ARTICLE 6.6: REPATRIATION

1. Each Party shall ensure to investors of the other Party the free transfer of their capital and the returns from any investments. The transfers shall be permitted in a freely useable currency at the market rate prevailing in the date of transfer, without undue delay. Such transfers shall include in particular, though not exclusively:

- (a) profits, capital gains, dividends, royalties, licence fees, interest and other current income;
- (b) the proceeds of the total or partial liquidation of an investment;

- (c) repayments made pursuant to a loan agreement in connection with an investment;
- (d) payments in respect of technical assistance, technical service and management fees;
- (e) payments in connection with contracting projects;
- (f) earnings of nationals of the other Party who work in connection with an investment in the territory of the former Party; and
- (g) payments of compensation under Articles 6.4 and 6.5.

2. Notwithstanding paragraph 1, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences, and the recovery of proceeds of crime;
- (d) ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings such as judicial and quasi-judicial proceedings; or
- (e) social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes.

#### ARTICLE 6.7: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;

- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

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

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

#### ARTICLE 6.8: SUBROGATION

1. In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Agreement, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

2. Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its own investors shall not affect the rights of such investors to make their claims against the other Party in accordance with Article 6.21.

#### ARTICLE 6.9: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor that is an enterprise of the other Party where the denying Party establishes that:

- (a) the enterprise has no substantial business operations in the territory of the other Party; or
- (b) investors of the denying Party own or control the enterprise.

#### ARTICLE 6.10: MEASURES IN THE PUBLIC INTEREST

Nothing in this Chapter shall be construed to prevent:

- (a) a Party or its regulatory bodies from adopting, maintaining or enforcing any measure, on a non-discriminatory basis; or
- (b) the judicial bodies of a Party from taking any measures;

consistent with this Chapter that is in the public interest, including measures to meet health, safety or environmental concerns.

#### ARTICLE 6.11: GENERAL EXCEPTIONS

1 Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party or its investors where like conditions prevail, or a disguised restriction on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

#### ARTICLE 6.12: SECURITY EXCEPTIONS

1. Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests
  - (i) relating to fissionable and fusionable materials or the materials from which they are derived;



- (ii) in time of war or other emergency in international relations;
  - (iii) relating to the production or supply of arms and ammunition; or
  - (iv) to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or an investor of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such an enterprise or to its investments.

3. Paragraph 2 shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in their exchange of letters, which shall form an integral part of this Agreement.

4. This Article shall be interpreted in accordance with the understanding of the Parties on non-justiciability of security exceptions as set out in their exchange of letters, which shall form an integral part of this Agreement.

#### ARTICLE 6.13: DISCLOSURE OF INFORMATION

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of public or private enterprises.

#### ARTICLE 6.14: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 6.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not impair the substance of the benefits of any of the provisions in this Chapter.

2. Notwithstanding Article 6.3, a Party may require, from an investor of another Party or its investment, routine business information, to be used solely for informational or statistical purposes, concerning that investment in its territory. The Party shall protect such business information as is confidential from disclosure that would prejudice the investor's or the investment's competitive position. Nothing in this paragraph shall

preclude a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

#### ARTICLE 6.15: TRANSPARENCY

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

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

#### ARTICLE 6.16: SPECIFIC COMMITMENTS AND EXCEPTIONS

1. With respect to paragraph 1 Article 6.3:

- (a) In the case of India – The Schedule of Specific Commitments that India undertakes under paragraph 1 of Article 3 are set out in Annex 6A, which specifies the terms, limitations, conditions and qualifications on national treatment in relation to paragraph 1 of Article 6.3.
- (b) In the case of Singapore – paragraph 1 of Article 6.3 shall not apply to any exception that is specified by Singapore or any measure that Singapore maintains with respect to sectors, sub-sectors or activities as set out in its Schedule of Reservations at Annex 6B.

2. Article 6.19 and Article 6.23 shall not apply to:

- (a) any exception that is specified by the Parties; or
- (b) any measure that the Parties maintain with respect to sectors, sub-sectors or activities as set out

in their respective Schedules at Annexes 6A and 6B.

#### ARTICLE 6.17: REVIEW OF COMMITMENTS AND EXCEPTIONS

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

2. As part of the reviews of this Agreement pursuant to Article 16.3:

- (a) India undertakes to review its Schedule of Specific Commitment as set out in Annex 6A with a view to increasing its list of committed sectors and reducing the terms, limitations, conditions and qualifications on national treatment with regard to the establishment, acquisition or expansion of investments; and
- (b) Singapore undertakes to review the status of the exceptions set out in its Schedule in Annex 6B with a view to reducing the exceptions or removing them.

3. In any other case, a Party may, upon reasonable notice, request the other Party for a review of its commitments/exceptions:

- (a) In the case of India as set out in Annex 6A - its list of committed sectors and reducing the terms, limitations, conditions and qualifications on national treatment with regard to the establishment, acquisition or expansion of investments; or
- (b) In the case of Singapore as set out in Annex 6B – its exceptions with a view to reducing or removing them.

Any review pursuant to such a request should maintain the overall balance of commitments undertaken by each Party under this Agreement.

#### ARTICLE 6.18: ACCESS TO COURTS OF JUSTICE

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

#### ARTICLE 6.19: SENIOR MANAGEMENT AND BOARD OF DIRECTORS

1. Neither Party may require that an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of the Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## ARTICLE 6.20: REQUEST FOR EXEMPTION ON IMPORT DUTIES

1. India shall consider on a case-by-case basis requests from Singapore investors for exemptions from custom duties for import of capital goods, excluding consumables, for the purposes of infrastructure projects in India.
2. For the purpose of paragraph 1 above, infrastructure projects include but are not limited to the following:
  - (a) roads and highways;
  - (b) ports and other seaport related infrastructure, such as logistics;
  - (c) airports and other aviation related infrastructure;
  - (d) power (generation, transmission, distribution);
  - (e) water resource management;
  - (f) waste management;
  - (g) other urban infrastructure, such as pollution control and management;
  - (h) housing, including townships; and
  - (i) telecommunications.
3. Such requests shall be made in such form and include such details as may be prescribed. These forms and details would be notified to the contact point provided under Article 16.2.
4. Decision on such requests shall not be subject to the provisions of Article 6.18, Article 6.21, or Chapter 15.

## ARTICLE 6.21: INVESTMENT DISPUTES

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment, except any dispute arising under Article 6.3.1<sup>6-4</sup>.
2. The parties to the dispute shall, as far as possible, resolve the dispute through consultations and negotiations.

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<sup>6-4</sup> This Article is subject to the understanding of the Parties on Compulsory Investor-To State Dispute Settlement in relation to Pre-Establishment as set out in their exchange of letters, which shall form an integral part of this Agreement.

3. Where the dispute cannot be resolved as provided for under paragraph 2 within 6 months from the date of a request for consultations and negotiations, then unless the disputing investor and the disputing Party agree otherwise or the investor concerned has already submitted the dispute to the courts or administrative tribunals of the disputing Party (excluding proceedings for interim measures of protection referred to in paragraph 5), the investor may submit the dispute to:

- (a) the courts or administrative tribunals of the disputing Party;
- (b) the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965 (“ICSID Convention”) if the ICSID Convention is in force between the Parties; or if the ICSID Convention is not in force between the Parties, to the ICSID for conciliation or arbitration pursuant to the Additional Facility Rules of ICSID; or
- (c) arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Each Party hereby consents to the submission of a dispute to conciliation or arbitration under paragraph 3(b) and paragraph 3(c) above in accordance with the provisions of this Article, conditional upon:

- (a) the submission of the dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the investor or its investment; and
- (b) the disputing investor providing written notice, which shall be submitted at least 30 days before the claim is submitted, to the disputing Party of his or her intent to submit the dispute to such conciliation or arbitration and which:
  - (i) nominates either paragraph 3(b) or paragraph 3(c) as the forum for dispute settlement (and, in the case of paragraph 3(b), nominates whether conciliation or arbitration is being sought);
  - (ii) waives its right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 5) before any of the other dispute settlement fora referred to in paragraph 3 in relation to the matter under dispute; and
  - (iii) briefly summarises the alleged breach of the disputing Party under this Chapter (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

5. Neither Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party,

prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 3, for the preservation of its rights and interests.

6. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

#### ARTICLE 6.22: OTHER OBLIGATIONS

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, result in a position entitling investors of the other Party and investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

#### ARTICLE 6.23: PROHIBITION OF PERFORMANCE REQUIREMENT

The Parties reaffirm their commitments to WTO Agreement on Trade-Related Investment Measures (“TRIMs”) and hereby incorporate the provisions of TRIMs, as may be amended from time to time, as part of this Agreement.

#### ARTICLE 6.24: ENTRY INTO FORCE, DURATION AND TERMINATION

In the event that this Agreement is terminated, the provisions of this Chapter, the provisions in Chapter 15, and other provisions in the Agreement necessary for or consequential to the application of this Chapter, except paragraph 1 of Article 6.3 and Article 6.16, shall continue in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

## CHAPTER 7

### TRADE IN SERVICES

#### ARTICLE 7.1: DEFINITIONS

For the purposes of this Chapter:

- (a) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (b) **commercial presence** means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (c) **direct taxes** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (d) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association; cooperative or society;
- (e) **juridical person of the other Party** means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of the other Party or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (1) natural persons of the other Party; or
    - (2) juridical persons of the other Party identified under paragraph (e)(i);

Provided, however, that for the purposes of supply of audio-visual, education, financial and telecommunications services through commercial presence, except as otherwise agreed by the Parties, a “juridical person of the other Party” means a juridical person that is owned or controlled by:

- (i) the other Party; or
- (ii) natural persons of the other Party; or
- (iii) juridical persons constituted or organized under the laws of the other Party that are owned by natural persons of the other Party or the other Party, whether directly or indirectly, or controlled by natural persons of the other Party or the other Party;

Provided, further, that for the purposes of supply of financial services through commercial presence in India, except as otherwise agreed by the Parties, a “juridical person of the other Party” includes DBS Group Holdings Limited, United Overseas Bank Limited and Oversea- Chinese Banking Corporation Limited (hereinafter collectively referred to as “Singapore Banks”), each of which may, respectively, nominate not more than one legal entity from among its holding companies, successors in title that it may designate, or entities which it owns or controls, or itself, to enter into the financial services sector in India, provided that any such entry by each of the Singapore Banks will be by means of incorporation of a separate legal entity in India, and will be restricted respectively to one legal entity each in respect of banking, asset management and insurances services; except that in respect of the remaining financial services, the restriction to one entity will not apply and in respect of bank branches, incorporation in India will not be required.

- (f) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (g) **measures by Parties** means measures taken by:
  - (i) central, regional, or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (h) **measures by Parties 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 be offered to the public generally;



- (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (i) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (j) **natural person of a Party** means a natural person who resides in the territory of the Party or elsewhere and who under the law of that Party:
  - (i) is a national of that Party; or
  - (ii) has the right of permanent residence in that Party;
- (k) a juridical person is:
  - (i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;
- (l) **person** means either a natural person or a juridical person;
- (m) **services** means all services except services supplied in the exercise of governmental authority;
- (n) **service consumer** means any person that receives or uses a service;
- (o) **service of the other Party** means a service which is supplied:
  - (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;

- (p) **service supplier** means any person that supplies a service;<sup>7-1</sup>
- (q) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service; and
- (r) **trade in services** is defined as the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party (**cross-border**);
  - (ii) in the territory of a Party to the service consumer of the other Party (**consumption abroad**);
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party (**commercial presence**);
  - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (**presence of natural persons**).

#### ARTICLE 7.2: SCOPE AND COVERAGE

1. This Chapter applies to measures by a Party affecting trade in services.
2. In accordance with the provisions of Article 7.15, this Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers.
3. This Chapter shall not apply to:
  - (a) a service supplied in the exercise of governmental authority; and
  - (b) a shell company, which is any legal entity falling within the definition of “juridical person” in this Chapter which is established and located in the territory of the either Party with negligible or nil business operations or with no real and continuous business activities carried out in the territory of either Party.
4. New services, including new financial services, shall be considered for possible incorporation into this Chapter at future reviews held in accordance with Article 16.3, or at the request of either Party immediately. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when

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<sup>7-1</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

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

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

#### ARTICLE 7.3: MARKET ACCESS

1. With respect to market access through the modes of supply defined in paragraph (r) of Article 7.1, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments.<sup>7-2</sup>

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

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>7-3</sup>;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and

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<sup>7-2</sup> If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 7.1(r)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 7.1(r)(iii), it is thereby committed to allow related transfers of capital into its territory.

<sup>7-3</sup> paragraph 2(c) of Article 7.3 does not cover measures of a Party which limit inputs for the supply of services.

who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### ARTICLE 7.4: NATIONAL TREATMENT

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers<sup>7-4</sup>.

2. Any subsequent establishment, acquisition and expansion of investments by a service supplier that is incorporated, constituted, set up or otherwise duly organized under the law of a Party, and which is owned by a service supplier of the other Party, shall be regarded as an investment of the other Party, for the purpose of determining the applicable treatment to be accorded under this paragraph<sup>7-5</sup>.

3. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional or local level, treatment no less favourable than the most favourable treatment accorded by that regional or local level to like service suppliers of the Party of which it forms a part.

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

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

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<sup>7-4</sup> Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

<sup>7-5</sup> The Parties understand that such service suppliers shall be entitled to be accorded any better treatment which is available under the regime of that Party, at the time of such subsequent establishment, acquisition and expansion of investments. Any such better treatment accorded shall not be construed as an automatic addition to the commitments scheduled in India's Schedule of Specific Commitments in Annex 6A or the Parties' respective Schedules in Annex 6B.

#### ARTICLE 7.5: ADDITIONAL COMMITMENTS

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.3 or 7.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments.

#### ARTICLE 7.6: REVIEW OF MOST FAVOURED NATION COMMITMENTS

If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

#### ARTICLE 7.7: SCHEDULE OF SPECIFIC COMMITMENTS

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 7.3, 7.4 and 7.5. With respect to sectors where such commitments are undertaken, each Schedule of specific commitments shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 7.3 and 7.4 shall be inscribed in both the columns relating to Article 7.3 and Article 7.4.

3. Schedules of specific commitments shall be annexed to this Chapter as Annex 7A and Annex 7B and shall form an integral part of this Agreement.

#### ARTICLE 7.8: MODIFICATION OF SCHEDULES

1. A Party may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. It shall notify the other Party of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Party shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to the provisions of Chapter 15 of this Agreement.

#### ARTICLE 7.9: PROGRESSIVE LIBERALISATION

The Parties shall endeavour to review their schedules of specific commitments at least once every three years, or earlier, at the request of either Party, with a view to facilitating the elimination of substantially all remaining discrimination between the Parties with regard to trade in Services covered in this Chapter over a period of time. In this process, there shall be due respect for the national policy objectives and the level of development of the Parties, both overall and in individual sectors.

#### ARTICLE 7.10: DOMESTIC REGULATION

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

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

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

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

5. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the WTO General Agreement on Trade in Services (GATS), with a

view to their incorporation into this Chapter. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

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

- (a) does not comply with the criteria outlined in paragraphs 5(a), 5(b) or 5(c); and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

7. In determining whether a Party is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organisations<sup>7-6</sup> applied by that Party.

8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other.

#### ARTICLE 7.11: RECOGNITION

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.

2. In accordance with their prior agreement, the Parties shall ensure that their respective professional bodies in the service sectors of accounting and auditing, architecture, medical (doctors), dental and nursing negotiate and conclude, within twelve months of the date of entry into force of this Agreement, any such agreements or arrangements providing for mutual recognition of the education or experience obtained, requirements met, or licenses or certifications in those service sectors, the details of such agreements or arrangements, including the exact extent and scope of recognition. Any delay or failure by these professional bodies to reach and conclude agreement on the

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<sup>7-6</sup> The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

details of such agreements or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to the Dispute Settlement Chapter of this Agreement. Progress in this regard will be continually reviewed by the Parties in the course of the review of this Agreement pursuant to Article 16.3.

3. After the entry into force of this Agreement, upon a request being made in writing by a Party to the other Party in any regulated service sector not covered in paragraph 2, the requested Party shall encourage its relevant professional, standard-setting or self-regulatory body in that service sector to enter into negotiations, within a reasonable period of time from the date of the request being received in writing, to negotiate agreements or arrangements providing for mutual recognition of education, or experience obtained, requirements met, or licenses or certifications granted in that Service Sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreements or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to the Dispute Settlement Chapter of this Agreement. Progress in this regard will be continually reviewed by the Parties in the course of the review of this Agreement pursuant to Article 16.3.

4. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a country that is not a Party to this Agreement, that Party shall accord the other Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the territory of that other Party should also be recognised.

5. The Parties agree that they shall not be responsible in any way for the settlement of disputes arising out of or under the agreements or arrangements for mutual recognition concluded by their respective professional, standard-setting or self-regulatory bodies under the provisions of this Article and that the provisions of Chapter 15 shall not apply to disputes arising out of, or under, the provisions of such agreements or arrangements.

#### ARTICLE 7.12: MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS

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

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

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2 above, it may request that



Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

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

- (a) authorises or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its territory.

#### ARTICLE 7.13: BUSINESS PRACTICES

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 7.12, may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

#### ARTICLE 7.14: SAFEGUARD MEASURES

1. Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

2. The Parties shall review the issue of safeguard measures in the context of developments in international fora of which both parties are members.

#### ARTICLE 7.15: SUBSIDIES

1. The Parties shall review the treatment of subsidies in the context of developments in multilateral fora of which both Parties are Members.

2. In the event that either Party considers that its interests have been adversely affected by a subsidy or grant provided by the other Party, upon request, the other Party shall enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the subsidising Party may, as it deems fit, consider a request of the other Party for information relating to the subsidy scheme or programme such as:

- (a) domestic laws or regulations under which the measure is introduced;
- (b) form of the measure (e.g. grant, loan, tax concession);
- (c) policy objective and/or purpose of the measure;
- (d) dates and duration of the programme or subsidy and any other time limits attached to it; and
- (e) eligibility requirements of the measure (e.g. criteria applied with respect to the potential population of beneficiaries).

4. The provisions of Chapter 15 of this Agreement shall not apply to any requests made or consultations held under the provisions of this Article or to any disputes that may arise between the Parties out of, or under, the provisions of this Article.

#### ARTICLE 7.16: PAYMENTS AND TRANSFERS

1. Except under the circumstances envisaged in Article 7.17 a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 7.17 or at the request of the Fund.

#### ARTICLE 7.17: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services in respect of which it has obligations under Articles 7.3 and 7.4 or has made Additional Commitments including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any country that is not a Party to this Agreement.

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

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

#### ARTICLE 7.18: TRANSPARENCY

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to other Party, upon request, on all such matters.

#### ARTICLE 7.19: DISCLOSURE OF CONFIDENTIAL INFORMATION

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

#### ARTICLE 7.20: GOVERNMENT PROCUREMENT

Articles 7.3 and 7.4 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

## ARTICLE 7.21: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>7-7</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (d) inconsistent with Article 7.4, provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>7-8</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

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<sup>7-7</sup> The public order exception may be invoked by a Party, including its legislative, governmental, regulatory or judicial bodies, only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>7-8</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on world-wide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

2. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures under which it accords more favourable treatment to persons of a non-Party than that accorded to persons of the other Party to this Agreement as a result of a bilateral double taxation avoidance agreement between the Party and such non-Party.

#### ARTICLE 7.22: SECURITY EXCEPTIONS

1. Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations;
  - (iv) relating to protection of critical public infrastructure, including communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Each Party shall inform the other Party to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

3. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to a service supplier of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or a service supplier of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such a service supplier.

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Tax terms or concepts in paragraph 1(d) of Article 7.21 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

#### ARTICLE 7.23: DENIAL OF BENEFITS

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter:
  - (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a country that is not a Party to this Agreement;
  - (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
    - (i) by a vessel registered under the laws of a non-Party, and
    - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party;
  - (c) to the supply of a service through commercial presence, if the Party establishes at any time that persons of a non-Party own or control, or have acquired ownership or control over through subsequent transactions, the service supplier;
  - (d) to the supply of a service from or in the territory of the other Party, if the Party establishes that the service is supplied by a service supplier that is owned or controlled by a person of the denying Party.

#### ARTICLE 7.24: SERVICES-INVESTMENT LINKAGE

1. For the avoidance of doubt, the Parties confirm, in respect of Chapter 6, that:-
  - (a) the following articles of Chapter 6 apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment, regardless of whether or not such service sector is scheduled in a Party's Schedule of Specific Commitments in Annex 7A or 7B :
    - (i) Article 6.4;
    - (ii) Article 6.5;
    - (iii) Article 6.6;
    - (iv) Article 6.8;
    - (v) Article 6.10;
    - (vi) Article 6.14;
    - (vii) Article 6.18;

- (viii) Article 6.19;
  - (ix) Article 6.22; and
  - (x) Article 6.23.
- (b) Article 6.21 apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment and an obligation under Chapter 6, regardless of whether or not such service sector is scheduled in a Party's Schedule of Specific Commitments in Annex 7A or 7B; and
- (c) the provisions relating to entry into force, duration and termination in Article 6.24 shall apply to the provisions of Chapter 6 that are made applicable under paragraphs (a) and (b) above.

## CHAPTER 8

### AIR SERVICES

#### ARTICLE 8

1. The Parties affirm, *mutatis mutandis*, their rights and obligations under the GATS.
2. The Parties affirm their rights and obligations under the Air Services Agreement (ASA) between the Government of the Republic of India and the Government of the Republic of Singapore dated 23 January 1968, as amended by and read with subsequent Memoranda or Supplementary Memoranda of Understanding, Confidential Memoranda of Understanding and Exchange of Letters entered into between their respective Governments.
3. The Parties recognise the strategic partnership in civil aviation and the importance of air connectivity to support the expansion of tourism, trade and investments between the Parties. To facilitate the implementation, as well as to fully harness the benefits of this Agreement, the Parties shall review and enhance their bilateral ASA and explore further areas of mutually beneficial co-operation.



## CHAPTER 9

### MOVEMENT OF NATURAL PERSONS

#### ARTICLE 9.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry of natural persons on a comparable basis and of establishing transparent criteria and streamlined procedures for temporary entry, while recognizing the need to ensure border security. This Chapter provides for rights and obligations additional to those set out in Chapters 2, 6 and 7 in relation to the movement of natural persons between the Parties.
2. This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.
3. Nothing contained in this Chapter shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to unduly impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement.

#### ARTICLE 9.2: SCOPE AND DEFINITIONS

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are:
  - (a) service sellers of the first mentioned Party;
  - (b) service suppliers of the first mentioned Party;
  - (c) sellers of goods of the first mentioned Party;
  - (d) investors of the first mentioned Party in respect of an investment of that investor in the territory of the other Party; or
  - (e) employed by an investor of the first mentioned Party in respect of an investment of that investor in the territory of the other Party;
  - (f) advisor (as defined in paragraph 2(b)(iv)).
2. For the purposes of this Chapter, the following definitions shall apply:

- (a) **natural person** is as defined in paragraph (j) of Article 7.1 of this Agreement and specifically covers a national of a Party as described in paragraphs 1(a) to 1(f);
- (b) **business visitor** means a natural person of either Party who is:
  - (i) a service seller; or
  - (ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or
  - (iii) an investor of a Party or an employee of an investor (who is a manager, executive or specialist as defined under paragraph 2(f)) seeking temporary entry to establish an investment; or
  - (iv) seeking temporary entry as an Advisor in a capacity as an employee or otherwise to a person described in paragraphs 2(b) (i) to (iii), so long as any such advisory role is solely confined to such person, and does not involve any direct dealings with the general public;
- (c) **immigration visa** refers to:
  - (i) in respect of Singapore: A multiple journey visa, employment pass, or other document issued by Singapore, granting a natural person of India the right to reside or work or remain in the territory of Singapore, and;
  - (ii) in respect of India: An employment visa or business visa issued by India, granting a natural person of Singapore the right to reside or work or remain in the territory of India without the intent to reside permanently;
- (d) **temporary entry** means entry by a business visitor, a short-term service supplier, an intra-corporate transferee, or a professional, and spouses or dependants as defined in Article 9.6, as the case may be without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country;
- (e) **professional** means a natural person of a party who is employed in a specialised occupation as listed in Annex 9A that requires theoretical and practical application of specialised knowledge; and
  - (i) attainment of a post secondary degree in the specialty requiring three or more years of study (or the equivalent of such a degree) as a minimum of entry into the occupation. Such degrees include

Bachelors' degree, Masters' degree and Doctoral degree conferred by institutions in India and Singapore; and

- (ii) in the case of regulated professions, registration, license or credentials, as specified by the relevant authorities of a Party, if applicable, to engage in a business activity as a professional in one of the professions listed in Annex 9A, and for which specific commitments for that services sector have been undertaken by that Party under Chapter 7;
- (f) **intra-corporate transferee** means an employee of a service supplier, juridical person as defined in paragraph (e) of Article 7.1, investor or enterprise of a Party established in the territory of the other Party referred to below as an organization, through a branch, subsidiary or affiliate, who has been so employed for a period of not less than either six months in-company and one year industry experience or three years industry experience immediately preceding the date of the application for temporary entry, and who is a manager, executive or specialist as defined below:
- (i) **manager** means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations; this does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment, however, this does not prevent the manager, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;
  - (ii) **executive** means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; an executive would not primarily perform tasks related to the actual provision of the service or the operation of an investment; however, this does not prevent the executive, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;
  - (iii) **specialist** means a natural person within an organization who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organisation's service,

research, equipment, techniques or management (a specialist may include, but is not limited to, members of a licensed profession);

- (g) **service seller** means a natural person of a party who is a representative<sup>9-1</sup> of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (h) **seller of goods** means any person of a party engaged in the manufacture, production, supply or distribution of industrial or agricultural goods seeking temporary entry into the other Party in order to sell goods to, or to enter into a distribution or retailing arrangement with a person or an enterprise of the other Party engaged in an industrial or commercial enterprise, provided, however, that such person shall not sell goods directly to the general public of the other Party;
- (i) **short-term service suppliers** mean natural persons of a Party who:
  - (i) are employees of a service supplier or an enterprise of a Party not having a commercial presence or investment in the other, which has concluded a service contract with a service supplier or an enterprise engaged in substantive business operations in the other Party;
  - (ii) have been employees of the service supplier or enterprise for a time period of not less than three months in the relevant industry immediately preceding an application for admission for temporary entry;
  - (iii) are managers, executives or specialists as defined under paragraph 2(f) ;
  - (iv) are seeking temporary entry into the other Party for the purpose of providing a service as a professional in service sectors scheduled by the other Party under Chapter 7 of this Agreement on behalf of the service supplier or enterprise which employs them; and
  - (v) satisfy any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party;

3. Notwithstanding paragraph 1 of Article 9.1, the obligations of this Chapter shall only apply to the sectors in which specific commitments are undertaken by the concerned Party under Chapters 6 and 7 of this Agreement. However, they shall not apply to

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<sup>9-1</sup> For greater certainty, the Parties understand that in the case of a juridical person of a Party where the service supplier is also the sole employee, the term “representative of a service supplier” includes the service supplier who is seeking temporary entry into the other Party for the purpose of negotiating the sale of services, where such person will not be engaged in making direct sales to the general public or in supplying services directly.

Singapore's commitments for the legal services sector made under the provisions of Chapter 7.

#### ARTICLE 9.3: GENERAL PRINCIPLES FOR GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to natural persons of other Party, who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter.
2. Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extensions. Each Party shall notify applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.
3. Neither Party shall require labour market testing, economic needs testing or other procedures of similar effects as a condition for temporary entry in respect of natural persons upon whom the benefits of this Chapter are conferred.
4. Natural persons of either Party who are granted temporary entry into the territory of the other Party shall not be required to make contributions to social security funds in the host country. In such cases, they will not be eligible for social security benefits in the other Party for the duration of the stay.

#### ARTICLE 9.4: SHORT-TERM TEMPORARY ENTRY

##### **Business Visitors**

1. A Party shall, upon application by a business visitor of the other Party, who otherwise meets its criteria for the grant of a five-year multiple journey visa, ordinarily grant that business visitor with that immigration visa. Such a visa shall be granted provided the business visitor:
  - (a) complies with immigration measures applicable to temporary entry;
  - (b) presents proof of nationality;
  - (c) provides a letter of recommendation from a governmental economic agency of the Party to whom the application is made, giving an indication of his business activities/interests. In the event that it is not available, the Party shall consider a letter of recommendation from reputed Chambers of Commerce, Export Promotion Councils or similar organizations in his own country; and
  - (d) is otherwise qualified for entry under applicable measures relating to public health and safety and national security in accordance with this Chapter.

If that business visitor does not meet the aforesaid criteria, he or she may still be granted a multiple journey visa for a period of less than five years, as the Party granting the immigration visa deems fit. Each Party shall grant a business visitor of the other Party the right to temporary entry for a period of up to two months, which may be extended by a period of up to one month upon request, for holders of five-year multiple journey visas and up to one month for holders of multiple journey visas with a validity period of less than five years.

### **Short-Term Service Suppliers**

2. Each Party shall, upon application by a short-term service supplier of the other Party who otherwise meets its criteria for the grant of an immigration visa, grant that short-term service supplier, through the issuance of a single immigration visa, the right to temporary entry for an initial period of up to 90 days, with possibility for a further period of up to 90 days provided that the total sum of the initial period and the extended period shall not exceed 180 days or the length of the service contract referred to in paragraph 2(i)(i) of Article 9.2, whichever is the shorter period.

## **ARTICLE 9.5: LONG-TERM TEMPORARY ENTRY**

### **Intra-Corporate Transferees**

1. Unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration visa has been refused on such grounds of national security or public order by the granting Party as it deems fit, each Party shall grant temporary entry to an intra-corporate transferee of the other Party, who otherwise meets its criteria for the grant of an immigration visa, for an initial period of up to two years or the period of the contract, whichever is less. The period of stay may be extended for period of up to three years at a time for a total term not exceeding eight years.

### **Professionals**

2. Each Party shall grant temporary entry and stay for up to one year or the duration of contract, whichever is less, to a natural person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the professional otherwise complies with immigration measures applicable to temporary entry, on presentation by the natural person concerned of:

- (a) Proof of nationality of the other Party;
- (b) Documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including the letter of contract from the party<sup>9-2</sup> engaging the services of the natural person in the host Party; and

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<sup>9-2</sup> For the avoidance of doubt, “party” shall not mean the Republic of India or the Republic of Singapore (“Party”).

- (c) Documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

#### ARTICLE 9.6: EMPLOYMENT OF SPOUSES AND DEPENDANTS

For natural persons of a Party who have been granted the right to long term temporary entry and have been allowed to bring in their spouses or dependants, a Party shall, upon application, grant the accompanying spouses or dependants of the other Party the right to work as managers, executives or specialists (as defined in paragraphs 2(f)(i) to (iii) of Article 9.2), subject to its relevant licensing, administrative and registration requirements. Such spouses or dependants can apply independently in their own capacity (and not necessarily as accompanying spouses or dependants) and shall not be barred by the Party granting them the right to work from taking up employment in a category other than that of managers, executives, or specialists solely on the ground that they as the accompanying spouses or dependants are already employed in its territory as managers, executives or specialists.

#### ARTICLE 9.7: REGULATORY TRANSPARENCY

1. Each Party shall maintain or establish contact points or other mechanisms to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorized points allowing business persons to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking temporary entry in the other Party.

2. To the extent possible, each Party shall allow reasonable time between publication of regulations affecting the temporary entry of natural persons and their effective date, and such notification to the other Party can be made electronically available.

3. Prior to the entry into force of this Agreement, the Parties shall exchange information on current procedures relating to the processing of applications for temporary entry.

#### ARTICLE 9.8: IMMIGRATION MEASURES

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

#### ARTICLE 9.9: EXPEDITIOUS APPLICATIONS PROCEDURES

Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extension, for grant of Business/Employment Visa in the case of India and Business Visas/ Employment Passes in the case of Singapore, from natural persons of the other Party, including further immigration visa request or extension thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded pursuant to Article 7.11.

#### ARTICLE 9.10: NOTIFICATION OF OUTCOME OF APPLICATION

Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers, of the outcome of final determination, including the period of stay and other conditions.

#### ARTICLE 9.11: RESOLUTION OF PROBLEMS

The relevant authorities of both Parties shall endeavor to favorably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

#### ARTICLE 9.12: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Chapter 15 regarding a refusal to grant temporary entry under this chapter unless

- (a) the matter involves a breach of any of the provisions relating to the right of entry accruing under this Chapter;
- (b) involves a pattern of practice; and
- (c) its natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies of the other Party.

2. The remedies referred to in paragraph 1(c) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies including proceedings by way of review, and the failure to issue a determination is not attributable to the delay caused by the natural person.



ARTICLE 9.13: RESERVATIONS

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in respect of each service sector under Chapter 7.

## CHAPTER 10

### E-COMMERCE

#### ARTICLE 10.1: GENERAL

The Parties recognise the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development and the applicability of WTO rules<sup>10-1</sup> to electronic commerce.

#### ARTICLE 10.2: DEFINITIONS

For purposes of this Chapter:

**carrier medium** means any physical object, as listed under the WTO Information Technology Agreement (ITA-1) Attachment A, capable of storing a digital product by any method and from which a digital product can be perceived, reproduced or communicated, directly or indirectly;

**digital products** means computer programs, text, video, images, sound recordings and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically<sup>10-2</sup>;

**electronic means** means employing computer processing;

**electronic transmission or transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and

**person** means either a natural person or a juridical person as defined in Chapter 7.

#### ARTICLE 10.3: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapters 2, 6 and 7, subject to any reservations or exceptions applicable to such obligations.

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<sup>10-1</sup> This applies to WTO rules for which both parties are signatories.

<sup>10-2</sup> For greater clarity, digital products do not include digitized representations of financial instruments.

#### ARTICLE 10.4: DIGITAL PRODUCTS

1. A Party shall not apply customs duties or other duties, fees or charges on or in connection with the importation or exportation of digital products by electronic transmission<sup>10-3</sup>.
2. Each Party shall determine the customs value of imported carrier media bearing digital products according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored on the carrier medium.
3. (a) Each Party shall accord to the digital products of the other Party<sup>10-4</sup> treatment no less favourable than it accords to its own like digital products<sup>10-5</sup> in respect of all measures<sup>10-6</sup> affecting the contracting for, commissioning, creation, publication, production, storage, distribution, marketing, sale, purchase, delivery or use of such digital products.  
  
(b) A Party shall accord treatment no less favourable to digital products whose author, performer, producer, developer or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer or distributor is a person of the first Party.
4. A Party shall not accord treatment less favourable to some digital products on the basis of factors not found in paragraph 3, which have the effect of affording protection to its own digital products and/or which act as a disguised restriction to trade in digital products of the other Party.

#### ARTICLE 10.5: EXCEPTIONS

1. This Chapter is subject to the General and Security exceptions contained in Chapters 2, 6 and 7 and any other relevant exceptions or reservations set forth in other Chapters of this Agreement.
2. The provisions of this Chapter shall not apply to Government Procurement.
3. This Chapter does not apply to measures affecting broadcasting, as defined by each Party under its domestic law, which may include webcasting, cablecasting and video-on-demand.

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<sup>10-3</sup> The obligation in paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges provided that these are imposed in a manner consistent with Article III of GATT 1994 and its interpretative notes as incorporated into this Agreement by Article 2.2.

<sup>10-4</sup> **Digital products of the other Party** refers to digital products created, published, produced, stored, contracted for or commissioned in the territory of the other Party.

<sup>10-5</sup> **Its own like digital products** refers to digital products created, published, produced, stored, contracted for or commissioned in its own territory.

<sup>10-6</sup> **Measure** means any measure whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or any other form.

ARTICLE 10.6: TRANSPARENCY

Each Party shall publish or otherwise make available to the public its laws, regulations and measures of general application which pertain to electronic commerce.

## CHAPTER 11

### INTELLECTUAL PROPERTY CO-OPERATION

#### ARTICLE 11.1: CO-OPERATION

The Parties, recognizing the importance and potential of intellectual property rights and rights in plant varieties, undertake to develop and promote mutually beneficial co-operation between the Parties in this area.

#### ARTICLE 11.2: FORMS OF CO-OPERATION

The forms of the co-operation pursuant to Article 11.1 may include:

- (a) joint consideration of the organization of symposia, seminars, workshops and other training programs in Singapore and in India; and
- (b) joint consideration of collaboration in projects including the development of programmes, platforms, tools and other infrastructure to promote the effective use and application of intellectual property rights,

together with partners such as the Intellectual Property Training Institute (Nagpur, India) and the I P Academy (Singapore).

## CHAPTER 12

### SCIENCE AND TECHNOLOGY

#### ARTICLE 12.1: CO-OPERATION IN THE FIELD OF SCIENCE AND TECHNOLOGY

1. The Parties, recognising that science and technology, particularly in advanced areas, will contribute to the continued expansion of their respective economies in the medium and long term, shall develop and promote co-operative activities between the Parties (hereinafter referred to in this Chapter as “Co-operative Activities”), for peaceful purposes in the field of science and technology on the basis of equality and mutual benefit.

2. The Parties shall also encourage, where appropriate, other cooperative activities between parties, one or both of whom are entities in their respective territories other than the Parties (hereinafter referred to in this Chapter as “Other Co-operative Activities”), which could *inter alia*, include other governmental agencies, academies of science, research institutes, enterprises, institutions of higher education and scientific societies.

3. The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Agreement on Cooperation in Science & Technology between the Ministry of Science and Technology of the Government of the Republic of India and the Ministry of Trade and Industry of the Government of the Republic of Singapore signed on 4<sup>th</sup> January 1995 (“the 1995 Agreement”), provided however that in the event of any inconsistency between the provisions of this Chapter and the provisions of the 1995 Agreement, the provisions of this Chapter shall prevail.

#### ARTICLE 12.2: AREAS AND FORMS OF CO-OPERATIVE ACTIVITIES

1. The areas of the co-operation pursuant to Article 12.1 may include research, design and development in:

- (a) marine biotechnology;
- (b) agricultural biotechnology;
- (c) space research;
- (d) advanced materials;
- (e) information technology; and
- (f) other areas agreed through mutual consultation.

2. The forms of the co-operation under paragraph 1 may include:
  - (a) exchange of information and data;
  - (b) joint seminars, workshops and meetings;
  - (c) visits and exchange of scientists, technical personnel or other experts, including through participation in science and technology conferences and seminars;
  - (d) implementation of joint projects and programmes; and
  - (e) commercialisation of technologies in both countries or any third country including participation in joint ventures.

#### ARTICLE 12. 3: PROTECTION AND DISTRIBUTION OF INTELLECTUAL PROPERTY RIGHTS AND OTHER RIGHTS OF A PROPRIETARY NATURE

1. Scientific and technological information of a non-proprietary nature arising from Co-operative Activities may be made available to the public by the government of either Party.
2. In accordance with the applicable laws and regulations of the Parties and with relevant international agreements to which the Parties are, or may become parties, the Parties shall ensure the adequate and effective protection of intellectual property rights or other rights of a proprietary nature resulting from the Cooperative Activities undertaken pursuant to this Chapter.
3. The Parties will agree on how the rights to the results of Co-operative Activities are to be distributed on the basis of mutually agreed terms, taking into account the contribution of each Party, both to the previous and resultant intellectual property. The Parties shall consult for this purpose as necessary.

#### ARTICLE 12.4: COSTS OF CO-OPERATIVE ACTIVITIES

1. Costs of Co-operative Activities shall be borne in such manner as may be mutually agreed.
2. The implementation of this Chapter shall be subject to the availability of appropriate funds and the applicable laws and regulations of each Party.

#### ARTICLE 12.5: IMPLEMENTING ARRANGEMENTS

Implementing arrangements setting forth the details and procedures of Co-operative Activities under this Chapter may be made between the government agencies of the Parties who are responsible for various areas of collaboration.

## **CHAPTER 13**

### **EDUCATION**

#### **ARTICLE 13.1: CO-OPERATION**

The Parties, recognising the importance of education on sustainable economic growth, human resource, and social development, shall develop and promote mutually beneficial co-operation between the Parties, in the field of education.

#### **ARTICLE 13.2: AREAS AND FORMS OF CO-OPERATION**

1. The Parties shall encourage close co-operation between their educational institutions.

2. Both countries shall facilitate collaborations between the Indian Institutes of Technology (IIT) and/or Indian Institute of Science (IISc), and the universities in Singapore, such as proposed collaboration between IIT Mumbai and the National University of Singapore, and IIT Chennai and the Nanyang Technological University of Singapore, to offer post-graduate research and education, with industrial linkages to, multi-national and local companies based in India and Singapore.

3. The degrees specified by the University Grants Commission of India and awarded by an approved university or an institute deemed to be a university under the University Grants Commission (UGC) or an Institution of National Importance of India and similarly, degrees awarded by the universities in Singapore shall be recognised for the purposes of qualifying the holder to be considered for admission to the universities of both countries. This does not exempt the holder of a degree from India or Singapore from complying with other admission conditions or requirements as may be imposed by the educational institutes in India or Singapore respectively.

#### **ARTICLE 13.3: JOINT COMMITTEE ON EDUCATION**

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Education (hereinafter referred to in this Article as “the Education Joint Committee”) shall be established. The functions of the Education Joint Committee shall be:

- (a) overseeing and reviewing the co-operation and implementation of this Chapter;
- (b) providing advice to the Parties with regard to the implementation of this Chapter, which may include identification and recommendation of areas of co-operation and encouragement of their implementation; and
- (c) any other areas of cooperation in education which may be mutually agreed upon.



2. The Education Joint Committee shall comprise:
  - (a) senior officials from the Ministry of Human Resource Development of India, and the Economic Development Board of Singapore, as co-chairs; and
  - (b) such other members as may be appointed by the Ministry of Human Resource Development of India and the Economic Development Board of Singapore.
3. Each Party may invite representatives of its relevant entities including those from the private sector, with the necessary expertise relevant to the issues to be discussed, to participate in the Education Joint Committee.
4. The Education Joint Committee shall hold its inaugural meeting within 12 months after this Agreement comes into force. Subsequent meetings of the Education Joint Committee shall be held alternately in India and Singapore and at such frequency as the Parties may agree on.

## CHAPTER 14

### MEDIA

#### ARTICLE 14.1: CO-OPERATION

The Parties, recognising both the potential of the media, such as print, film and broadcasting, as a means for promoting understanding between the Parties and the rapid development of innovative media services, shall promote co-operation in this area between the Parties.

#### ARTICLE 14.2 : EXCHANGE OF VIEWS BETWEEN REGULATORY AUTHORITIES

The Parties, recognising that mutual understanding of the media services in the respective Parties will enhance the ability of competent authorities of the Parties to work together, and that strengthening the relationship between their respective regulatory authorities will enable the Parties to better cope with the emergence of new media services, shall exchange views and information on issues relating to the media sector, which may include:

- (a) policy and regulatory framework for emerging media services and other issues concerning the media industry;
- (b) approach to regulation of content;
- (c) mechanism for promoting private sector activities; and
- (d) encouraging co-operation between their respective industries.

#### ARTICLE 14.3 : FRAMEWORK FOR CO-OPERATION

A detailed framework for media co-operation is annexed to this Chapter as Annex 14A.

## CHAPTER 15

### DISPUTE SETTLEMENT

#### ARTICLE 15.1: SCOPE AND COVERAGE

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.
2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement.
3. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such measures as may be required to ensure its observance within its territory.
4. Arbitral tribunals shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

#### ARTICLE 15.2: DEFINITION

For the purposes of this Chapter, the term “award” shall, unless the context otherwise requires, mean findings, recommendations and/or rulings, as the case may be, and shall exclude payment of monetary compensation by the Party concerned.

#### ARTICLE 15.3: CONSULTATIONS

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.
2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement, may, with a view to achieving satisfactory settlement of the matter, make representations to the other Party, which shall give consideration to the representations made to it.
3. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis of the complaint.

4. If a request for consultation is made pursuant to this Article, the Party to which the request is made shall reply to the request within 10 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

5. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

- (a) provide sufficient information as may be reasonably available at the stage of consultations to enable a full examination of how the measure might affect the operation of the Agreement; and
- (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

#### ARTICLE 15.4: GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 15.5.

3. All proceedings under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter.

#### ARTICLE 15.5: APPOINTMENT OF ARBITRAL TRIBUNALS

If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal under this Article. The request shall include a statement of the claim and the grounds on which it is based.

#### ARTICLE 15.6: COMPOSITION OF ARBITRAL TRIBUNALS

1. The arbitral tribunal referred to in Article 15.5 shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request under Article 15.5. If a Party fails to appoint an arbitrator within such period, then the Arbitrator appointed by the other Party shall act as the sole arbitrator of the Tribunal.

2. Once the Parties have appointed their respective arbitrators, the Parties shall endeavour to agree on a third arbitrator who shall serve as chair. If the Parties are unable to agree on the chair of the arbitral tribunal within 30 days after the date on which the second arbitrator has been appointed, the chair shall be appointed in the presence of both Parties by a draw of lot from a list comprising four nominees of each Party. If a Party fails to submit its list of four nominees within 10 days of the other Party submitting its

list, the chair shall be appointed by a draw of lot from the list already submitted by the other Party.

3. Any person appointed as a member or chair of the arbitral tribunal shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence. Except in the case of a sole arbitrator appointed in accordance with paragraph 1, the chair shall not be a national of either Party and shall not have his or her usual place of residence in the territory of, nor be employed by, either Party, nor have dealt with the case in any capacity.

4. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

#### ARTICLE 15.7: FUNCTIONS OF ARBITRAL TRIBUNALS

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that the Party in default bring the measure into conformity with that provision.

2. The award of the arbitral tribunal shall be set out in a report released to the Parties, including the reasons for the award. An arbitral tribunal may make its award upon the default of a Party.

3. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

4. Apart from the matters set out in Article 15.8, the arbitral tribunal shall regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations, unless the Parties agree otherwise in writing.

#### ARTICLE 15.8: PROCEEDINGS OF ARBITRAL TRIBUNALS

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

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the two countries with the venue of the first sitting to be decided by a draw of lot in the presence of the Parties.

3. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing

statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its submission.

6. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its submission first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

8. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

9. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

10. At the request of a Party to the arbitral proceeding or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the arbitral proceedings so agree and subject to such terms and conditions as such Parties may agree.

11. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.

12. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its formation. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its

report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

#### ARTICLE 15.9: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

#### ARTICLE 15.10: TIME FRAMES

All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the Parties, or by application by either Party to the arbitral tribunal which is seized of the matter.

#### ARTICLE 15.11: IMPLEMENTATION

1. The Party concerned shall comply with the arbitral tribunal's award within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties or, where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the award of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

#### ARTICLE 15.12: COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the award of the arbitral tribunal under paragraph 2 of Article 15.11 within 20 days of the report of that arbitral tribunal being provided to the Parties, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually acceptable compensation or solution.
2. If no mutually acceptable compensation or solution has been reached within 20 days after the request of the complaining Party to enter into negotiations on compensatory adjustment, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original arbitral tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 15.5.
3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.
4. In considering what benefits to suspend under paragraph 2:
  - (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
  - (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.
5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's award has done so, or a mutually acceptable compensation or solution is reached.
6. With respect to paragraph 5, any dispute between the Parties on whether a particular measure found by the arbitral tribunal to be inconsistent with this Agreement has been removed or brought into conformity with the arbitral tribunal's award shall be referred to the same tribunal for a final decision. The complaining Party shall refer the matter to the arbitral tribunal together with its submissions and the other Party shall respond within 15 days thereafter so that the arbitral tribunal can give its final decision within 15 days of the latter Party's response.

#### ARTICLE 15.13: EXPENSES

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.



## CHAPTER 16

### GENERAL AND FINAL PROVISIONS

#### ARTICLE 16.1: FULFILLMENT OF OBLIGATIONS AND COMMITMENTS

Each Party shall ensure, in its territory, the observance and fulfillment of its obligations and commitments under this Agreement.

#### ARTICLE 16.2: CONTACT POINT

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

#### ARTICLE 16.3: REVIEW

1. In addition to the provisions for consultations elsewhere in this Agreement, Ministers in charge of trade negotiations of the Parties shall meet within a year of the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement.

2. In the course of such a review, the Parties may establish any working groups or committees (on an ad hoc basis or otherwise) based on agreed terms of reference for such working groups or committees (where necessary) and also composition thereof in order to:

- (a) study and recommend to the Ministers in charge of trade negotiations of the Parties any appropriate measures to resolve any issues arising from the implementation or application of any part of this Agreement; and / or
- (b) consider, at either Party's request, fresh concessions or issues not already dealt with by this Agreement.

#### ARTICLE 16.4: ASSOCIATION WITH THE AGREEMENT

This Agreement is open to accession or association, on terms to be agreed between the Parties, by any country or separate customs territory.

#### ARTICLE 16.5: RELATION TO OTHER AGREEMENTS

1. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are parties,

including the Marrakesh Agreement establishing the World Trade Organization (“WTO Agreement”)

2. In the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

#### ARTICLE 16.6: ANNEXES

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

#### ARTICLE 16.7: AMENDMENTS

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed between them.

#### ARTICLE 16.8: ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on 1 August 2005.
2. Either Party may terminate this Agreement by giving the other Party six months' advance notice in writing.
3. Within 30 days of delivery of a notification under paragraph 2, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect at a later date than provided under paragraph 2. Such consultations shall commence within 30 days of a Party's delivery of such request.

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

Done at New Delhi, India, this twenty-ninth day of June 2005, in two originals in English language, each text being equally authentic.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF SINGAPORE:

FOR THE GOVERNMENT OF  
THE REPUBLIC OF INDIA:

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LEE HSIEN LOONG  
PRIME MINISTER

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DR. MANMOHAN SINGH  
PRIME MINISTER