EUROPEAN
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ANNEX 1

# ANNEX

***to the***

**Proposal for a Council Decision**

**on the signing of the Free Trade Agreement between the European Union and the Republic of India**

FREE TRADE AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF INDIA

PREAMBLE

THE EUROPEAN UNION, hereinafter also referred to as the "EU",

and

THE REPUBLIC OF INDIA, hereinafter referred to as "India",

hereinafter referred to individually as a "Party" and jointly as the "Parties",

SEEKING to establish a stable and predictable environment with clear and mutually advantageous rules governing trade between the Parties and to reduce or eliminate related barriers;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare of their peoples and, to this end, affirming their commitment to promote trade;

CONVINCED that this Agreement will create an expanded and secure market for goods and services, thus enhancing the competitiveness of their economies;

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

RECALLING their respective continued commitment to the Paris Agreement adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015 (hereinafter referred to as "Paris Agreement") and its significant relevance to this Agreement;

DETERMINED to address the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade, and to support their growth by enhancing their ability to participate in, and benefit from, the opportunities created by this Agreement; and

AFFIRMING each Party’s right to regulate within its territory in pursuit of its legitimate policy objectives,

HAVE AGREED AS FOLLOWS:

# CHAPTER 1

# INITIAL PROVISIONS AND GENERAL DEFINITIONS

## ARTICLE 1.1

### Objectives

The objectives of this Agreement are to liberalise trade and investment, facilitate trade and foster a closer economic relationship between the Parties.

## ARTICLE 1.2

### Establishment of a free trade area

The Parties establish, by virtue of this Agreement, a free trade area in conformity with Article XXIV of GATT 1994 and Article V of GATS.

ARTICLE 1.3

General definitions

For the purposes of this Agreement, and unless otherwise provided:

(a) "Agreement" means the Free Trade Agreement between the European Union and the Republic of India;

(b) "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(c) "Anti-dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(d) "CCMAA Agreement" means the Agreement between the European Community and the Republic of India on customs cooperation and mutual administrative assistance in customs matters, done at Brussels on 28 April 2004;

(e) "customs authority" means:

(i) for the European Union, the services of the European Commission responsible for customs matters, or, as appropriate, the customs administrations and any other authorities empowered in the Member States or at the level of the European Union to apply and enforce customs laws and regulations; and

(ii) for India, the Central Board of Indirect Taxes and Customs or its successors;

(f) "customs duty" means any duty, or charge of equivalent effect imposed on importation of a good, including any form of cess, surtax or surcharge and any other levies on importation, but does not include:

(i) a charge equivalent to an internal tax imposed consistently with Article III of GATT 1994 including its Notes and Supplementary Provisions;

(ii) an anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with the GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the SCM Agreement or the Safeguards Agreement, as appropriate; or

(iii) a fee or other charge in connection with importation commensurate with the cost of services rendered in conformity with Article 2.9 (Fees and charges);

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

(h) "days" means calendar days, including weekends and holidays;

(i) "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes, in Annex 2 to the WTO Agreement;

(j) "existing" means in effect on the date of entry into force of this Agreement;

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

(l) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement;

(m) "good of a Party" means a domestic product as that is understood in GATT 1994, and includes originating goods of that Party;

(n) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes, developed by the World Customs Organization (hereinafter referred to as "WCO");

(o) "Import Licensing Agreement" means the Agreement on Import Licensing Procedures, in Annex 1A to the WTO Agreement;

(p) "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;

(q) "measure" means any measure by a Party[1], whether in the form of a law, regulation, rule, procedure, decision, administrative action, practice, or any other form;

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[1] Measure by a Party includes any measure adopted or maintained by non-governmental bodies in the exercise of powers delegated by a Party and any measure adopted or maintained by any entity which is acting on the instructions of or under the direction or control of a Party with regard to that measure.

(r) "Member State" means a Member State of the European Union;

(s) "originating" means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of origin and origin procedures);

(t) "person" means a natural person or a juridical person;

(u) "preferential tariff treatment" means the application of the duty rate under this Agreement to an originating good pursuant to Article 2.5 (Reduction or elimination of customs duties);

(v) "Safeguards Agreement" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(w) "sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

(x) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

(y) "SME" means a small or medium-sized enterprise, including a micro-sized enterprise;

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

(aa) "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

(bb) "territory" means:

(i) for the European Union, the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable, and under the conditions laid down in those Treaties; and

(ii) for India, the territory of the Republic of India, which includes its land territory, territorial waters, and the airspace above them, as well as other maritime zones including the Exclusive Economic Zone and the continental shelf over which the Republic of India exercises sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its National law(s), rules and regulations and international law including the 1982 United Nations Convention on the Law of the Sea;

(cc) "Trade Facilitation Agreement" means the Agreement on Trade Facilitation in Annex 1A to the WTO Agreement;

(dd) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

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

(ff) "WTO" means the World Trade Organization; and

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

ARTICLE 1.4

Relation to other agreements

1. The existing agreements between the Member States, the European Community or the European Union, of the one part, and India, of the other part, are not superseded or terminated by this Agreement.

2. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement. Nothing in this Agreement shall be construed as requiring a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

3. In the event an inconsistency arises between this Agreement and another agreement to which the Parties are a party, the Parties shall, on request of either Party, promptly consult with each other with a view to finding a mutually satisfactory solution.

## ARTICLE 1.5

### References to laws, regulations, other agreements and their amendments

1. Unless otherwise provided for in this Agreement, any reference in this Agreement to laws or regulations of a Party shall be understood to include amendments thereto.

2. Unless otherwise provided for in this Agreement, where international agreements are referred to or are incorporated into this Agreement, in whole or in part, they shall be understood to include amendments thereto, or their successor agreements, that enter into force for both Parties on or after the date of signature of this Agreement, unless a Party objects. In the event of such objection, the Parties shall, on request of either Party, promptly consult with each other with a view to finding a mutually satisfactory solution to this matter.

ARTICLE 1.6

Territorial application

1. This Agreement applies to the territory set out in point (bb) of Article 1.3 (General definitions).

2. As regards the provisions of this Agreement concerning the tariff treatment of goods, including rules of origin and the temporary suspension of this treatment, this Agreement also applies to those areas of the customs territory of the European Union, as defined by Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, not covered by paragraph 1.

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Objective

The Parties shall progressively and mutually liberalise trade in goods in accordance with this Agreement.

ARTICLE 2.2

Scope

Unless otherwise provided for in this Agreement, this Chapter applies to trade in goods of a Party.

ARTICLE 2.3

Definitions

For the purposes of this Chapter:

(a) "consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third country, a consular invoice or consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of a good;

(b) "export licensing procedures" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs purposes, to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

(c) "import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs purposes, to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party; and

(d) "repair or alteration" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair or alteration of goods includes restoration and maintenance but does not include an operation or process that:

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

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

 (iii) is used to improve or upgrade the technical performance or change the function of a good.

ARTICLE 2.4

National treatment on internal taxation and regulation

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To this end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-central level of government, treatment no less favourable than the most favourable treatment that sub-central level of government accords to any like goods of that Party.

ARTICLE 2.5

Reduction or elimination of customs duties

1. Unless otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on goods originating in the other Party in accordance with its schedule in Annex 2-A (Schedules of tariff commitments).

2. For the purposes of paragraph 1, the base rate of customs duties shall be the "Base Rate" which is specified for each good in the schedules in Annex 2-A (Schedules of tariff commitments).

3. If a Party reduces its applied most-favoured-nation customs duty rate below the rate of customs duty applied in accordance with its schedule in Annex 2-A (Schedules of tariff commitments), the good originating in the other Party shall be eligible for that lower duty rate.

4. On request of a Party, the Parties shall consult to consider accelerating the reduction or elimination of customs duties set out in the schedules in Annex 2-A (Schedules of tariff commitments) or broadening the scope of tariff reduction or elimination under this Agreement. The Joint Committee may take a decision to amend Annex 2-A (Schedules of tariff commitments) to accelerate or broaden the scope of the tariff reduction or elimination.

## ARTICLE 2.6

### Classification of goods and transposition of schedules

1. For the purposes of this Agreement, the classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System and its legal notes and amendments.

2. Each Party shall ensure that the transposition of its schedule of tariff commitments, undertaken in order to implement Annex 2-A (Schedules of tariff commitments) and Annex 2-B (Steel tariff rate quotas) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing or diminishing the tariff commitments set out in Annex 2-A (Schedules of tariff commitments) and Annex 2-B (Steel tariff rate quotas).

## ARTICLE 2.7

### Modification of concessions

1. In exceptional circumstances, where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may request the other Party to enter into discussions for the purpose of modifying or withdrawing a concession contained in Annex 2-A (Schedules of tariff commitments) and Annex 2-B (Steel tariff rate quotas). The Party proposing to modify or withdraw a concession shall maintain a level of reciprocal and mutually advantageous concession to the other Party.

2. If the Parties agree on such modification or withdrawal of a concession, the Joint Committee shall adopt a decision to amend Annex 2-A (Schedules of tariff commitments) or Annex 2-B (Steel tariff rate quotas) in accordance with point (d)(i) of Article 18.2(2) (Functions of the Joint Committee).

ARTICLE 2.8

Export duties, taxes or other charges

1. If a Party intends to introduce a new duty, tax or other charge, or to increase the level of an existing duty, tax or other charge on, or in connection with, the exportation of a good, it shall notify the other Party as soon as practicable and, in any event, immediately after the adoption of any new measure.

2. On request of the Party affected by such a measure, the other Party shall provide information necessary to facilitate an examination of the impact of that measure on the trade between the Parties, to the extent practicable.

3. Thereafter, the affected Party may request consultations with the other Party in the Committee on Trade in Goods. The Parties shall enter into consultations as soon as practicable. The Parties shall conduct such consultations with the objective of addressing any adverse effects on trade.

4. The Parties shall protect any information designated as confidential.

5. This Article does not apply to goods classified under HS chapters 1 to 24.

6. Nothing in this Article shall affect the rights and obligations of the Parties under GATT 1994 in respect of duties, taxes or other charges on, or in connection with, the exportation of goods.

## ARTICLE 2.9

### Fees and charges

1. Each Party shall prohibit administrative fees having an equivalent effect to an import or export duty or charge.

2. Each Party shall ensure that fees, charges, formalities and requirements, other than import and export customs duties and measures listed in point (f) of Article 1.3 (General definitions), are consistent with the Parties' obligations under Article VIII of GATT 1994, including its Notes and Supplementary Provisions.

3. The Parties' customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.

4. Notwithstanding paragraph 3, the Parties' customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; or

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

5. Charges shall not exceed the approximate cost of the service provided, and shall not represent direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes. Charges shall not be calculated on an *ad valorem* basis except where the charges payable in a specific instance as a result of that calculation are demonstrably lower than the approximate cost of the service provided.

6. Without prejudice to the Parties' right to impose fees or charges under the conditions set in this Article, the fees or charges shall not reduce or nullify the tariff concessions provided under this Agreement.

7. The information on fees and charges shall be published via an officially designated medium and, if feasible and possible, on an official website. Such information shall include the reason or description for the fees or charges for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made. New or amended fees and charges shall not be imposed until information in accordance with this paragraph is published and made readily available.

8. No Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

ARTICLE 2.10

Repaired goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair or alteration, except that a customs duty of the good under repair or alteration may be applied to the value added resulting from the repair or alteration (including cost of material used in repairs, insurance and freight charges both ways) that was performed in the territory of the other Party, in accordance with the schedules in Annex 2-A (Schedules of tariff commitments).

2. Paragraph 1 does not apply to a good that has not entered into free circulation in a Party prior to being exported for the repair or alteration.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily[1] from the customs territory of the other Party for repair or alteration.

[1] For greater certainty, the meaning of the word "temporarily" shall be understood as defined by the laws and regulations of a Party.

ARTICLE 2.11

Import and export restrictions

A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions, or subparagraphs (b) and (c) of Article 11(1) of the Safeguards Agreement. To this end, Article XI of GATT 1994 and its Notes and Supplementary Provisions and subparagraphs (b) and (c) of Article 11(1) of the Safeguards Agreement, respectively, are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12

Pre-shipment inspections

1. A Party shall not require the mandatory use of pre-shipment inspection activities within the meaning of Article 1(3) of the Agreement on Pre-shipment Inspection in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Pre-shipment Inspection") except for safety and security purposes.[1] To this end, Articles 1 and 2 of the Agreement on Pre-shipment Inspection and Article 10(5) of the Trade Facilitation Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

[1] For greater certainty, "safety and security purposes" relate to goods that contain hazardous, toxic waste, radioactive contaminated waste or scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridges or any other explosive material in any other form either used or otherwise.

2. The Parties shall cooperate with a view to reaching a solution on issues related to pre-shipment inspection activities.

ARTICLE 2.13

State trading enterprises

1. With respect to state trading enterprises, including import and export monopolies, Article XVII of GATT 1994, including its Notes and Supplementary Provisions, and the Understanding on the Interpretation of Article XVII of GATT 1994 are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of this Article, import and export monopoly means the grant of an exclusive right or authority by a Party to an entity to import from or export to the other Party.

ARTICLE 2.14

Origin marking

1. Where India requires a mark of origin on the importation of goods from the European Union, India shall accept the origin mark "Made in the EU" or the equivalent in a language in accordance with the Indian origin marking requirements under conditions that are no less favourable than those applied to marks of origin of Member States.

2. For the purposes of the origin mark "Made in the EU", India shall treat the European Union as a single territory.

ARTICLE 2.15

Import licensing procedures

1. Each Party shall ensure that all import licensing procedures are neutral in application, and administered in a fair, equitable, predictable and transparent manner.

2. A Party shall adopt, maintain or administer import licensing procedures which are consistent with the Import Licensing Agreement, including its Interpretative Notes, and to that end, Articles 1 to 3 of the Import Licensing Agreement and its Interpretive Notes pertaining to those Articles are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. A Party that adopts new import licensing procedures or modifies existing import licensing procedures shall notify the other Party of such procedures within 60 days after the date of publication of the relevant procedure. The notification shall include the information specified in Article 5(2) of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this provision if it has notified the relevant new import licensing procedure, or any modifications to existing import licensing procedures, to the Committee on Import Licensing established by Article 4 of the Import Licensing Agreement, including the information specified in Article 5(2) of that agreement.

4. On request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Import Licensing Agreement, regarding any import licensing procedure that it has adopted or maintains, and wherever feasible, the procedures that it intends to adopt, or modifications to existing import licensing procedures.

5. Where a Party denies, in part or in full, an import licence application in respect of a good of the other Party, it shall, on request of the applicant, promptly and no later than 30 days after receiving the request, provide the applicant with a written explanation of the reasons for the denial and, if applicable, the procedures for resubmission of an application. An applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.

6. The applicant shall have the right of appeal or review to judicial, arbitral or administrative tribunals or procedures that shall be independent of the agencies entrusted with administrative enforcement in accordance with the laws and regulations or procedures of the importing Party.

ARTICLE 2.16

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever possible, before the procedure or modification takes effect but no later than the date on which such procedure or modification takes effect.

2. The publication of export licensing procedures shall include the following information:

(a) the texts of its export licensing procedures, or of any modifications it makes to those procedures, including a description of the goods subject to each export licensing procedure, the process for applying for a licence and any criteria an applicant must meet to be eligible to apply for an export licence and the administrative body or bodies to which an application or other relevant documentation should be submitted; and

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

3. Each Party shall notify the other Party of its existing export licensing procedures, unless available publicly. A Party that adopts new export licensing procedures, or modifies existing licensing procedures, shall notify the other Party, unless available publicly.

ARTICLE 2.17

Specific measures concerning the management of preferential tariff treatment

1. The Parties shall cooperate in preventing, detecting and combating breaches or circumventions of customs legislation related to the preferential tariff treatment granted under this Agreement in accordance with their obligations under Chapter 3 (Rules of origin and origin procedures) and the CCMAA Agreement[1].

2. A Party may, in accordance with the procedure laid down in paragraph 3, temporarily suspend the relevant preferential tariff treatment of the products concerned when:

(a) a Party has made a finding, based on objective information, that large-scale and systematic breaches or circumventions of customs legislation related to the preferential tariff treatment granted under this Agreement, have been committed; and

(b) the other Party repeatedly refuses or otherwise fails to comply with its obligations referred to in paragraph 1.

[1] For greater certainty, the mechanisms set out in this Agreement shall take precedence over the mechanisms under the CCMAA Agreement where both are applicable to address breaches or circumventions of customs legislation related to preferential tariff treatment granted under this Agreement. However, cooperation under the CCMAA Agreement may be sought, where appropriate, in a supplementary manner, or where mechanisms set out in this Agreement do not apply.

3. The Party which has made a finding referred to in paragraph 2 shall, without undue delay, notify the Joint Committee thereof and enter into consultations with the other Party through the Joint Committee with a view to reaching a solution that is acceptable to both Parties.

4. If the Parties fail to agree on a mutually acceptable solution within two months of the date of notification, the Party which made the finding may decide to suspend temporarily the relevant preferential tariff treatment of the products concerned. In this case, the Party which made the finding shall notify to the Joint Committee the temporary suspension, including the period during which it intends the temporary suspension to apply.

5. The temporary suspension shall apply only for a period necessary to counteract the breaches or circumventions referred to in paragraph 2 and to protect the financial interests of the Party concerned, and in any case it shall not apply for longer than six months.

6. The Parties shall keep the situation under review. Where the conditions set out in point (a) or (b) of paragraph 2 that gave rise to the temporary suspension no longer persist, the Party concerned shall cease the temporary suspension without undue delay before the end of the period notified to the Joint Committee.

7. Where the conditions that gave rise to the initial temporary suspension persist at the expiry of the six-month period, the Party concerned may decide to renew the temporary suspension. Any temporary suspension shall be subject to periodic consultations within the Joint Committee.

8. Each Party shall publish, in accordance with its internal procedures, notices to importers about any decision concerning temporary suspensions referred to in paragraph 3.

## ARTICLE 2.18

### Committee on Trade in Goods

The Committee on Trade in Goods is established pursuant to Article 18.3(1) (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees), the Committee on Trade in Goods shall have the following functions:

(a) promote trade in goods between the Parties, including through consultation on accelerating customs duty elimination under this Agreement and discuss other tariff and non-tariff issues as appropriate;

(b) address issues relating to the administration and operation of tariff rate quotas; and

(c) review the future amendments to, and updates of, the Harmonized System to ensure that the obligations of the Parties are not altered.

ARTICLE 2.19

Working group on wine and spirits

1. The Parties hereby establish a working group on wine and spirits under the auspices of the Committee on Trade in Goods. The Working group on wine and spirits shall have the following functions:

(a) whenever necessary, serve as a platform for the exchange of information and cooperation between the Parties in relation to the sectors of wine and spirits, in particular on product definitions, maturation practices, certification, labelling, best practices, oenological practices and processes;

(b) strengthen bilateral cooperation regarding regulatory requirements; and

(c) act as a forum for the Parties to discuss any other matters of mutual interest in the sectors of wine and spirits.

2. The working group shall:

(a) meet at the request of either Party, at a date and time agreed by the co-chairs of the working group, but no later than 90 days after the date of the request;

(b) be co-chaired, at an appropriate level, by representatives of the Parties;

(c) hold its meetings alternately in the European Union or India, or by any other appropriate means of communication as agreed between the representatives of the Parties;

(d) agree on its meeting schedule and the agenda by consensus;

(e) inform the Committee on Trade in Goods of the date and agenda of its meetings sufficiently in advance; and

(f) report to the Committee on Trade in Goods on the results and conclusions from each of their meetings.

3. The working group may adopt its own rules of procedure.

ARTICLE 2.20

Preference utilisation

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the date of entry into force of this Agreement in accordance with the schedules in Annex 2-A (Schedules of tariff commitments) and Annex 2-B (Steel tariff rate quotas).

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential tariff treatment under this Agreement and those that received non-preferential treatment.

## CHAPTER 3

## RULES OF ORIGIN AND ORIGIN PROCEDURES

### SECTION A

### RULES OF ORIGIN

#### ARTICLE 3.1

#### Definitions

1. For the purposes of this Chapter:

(a) "competent authority" means:

(i) for European Union, the customs authorities; and

(ii) for India, the Department of Commerce or any other designated authority;

(b) "consignment" means products which are either sent simultaneously from one consignor to one consignee or covered by a single transport document or, in the absence of such a document, by a single invoice;

(c) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product;

(d) "issuing authority" means:

    (i) for the European Union, the customs authorities; and

    (ii) for India, the authorities designated for issuance of certificates of origin, notified as appropriate;

(e) "material" means any substance, including any ingredient, raw material, component or part, used in the production of a product and physically incorporated into it;

(f) "non-originating material" means a material that does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;

(g) "producer" means a person who engages in the production of a product in the territory of a Party;

(h) "product" means the product resulting from the production, even if it is intended for later use as a material in the production of another product; and

(i) "production" means any kind of working or processing operation including growing, cultivating, raising, mining, harvesting, picking, breeding, extracting, gathering, collecting, fishing, farming, trapping, hunting, capturing, aquaculture, manufacturing, processing, disassembling or assembling a good.

2. Any cost and value referred to in this Chapter shall be recorded and maintained in accordance with the accounting principles generally accepted in the Party in which the product is produced.

## ARTICLE 3.2

## Requirements for originating products

1. The following products shall be considered as originating in a Party, provided that they satisfy all other applicable requirements of this Chapter:

(a) products wholly obtained or wholly produced in that Party within the meaning of Article 3.3 (Wholly obtained products); or

(b) products produced in that Party incorporating non-originating materials, provided they satisfy the requirements set out in Annexes 3-A (Introductory notes to product-specific rules of origin) and 3-B (Product-specific rules of origin).

2. The originating products referred to in paragraph 1 shall be considered as originating goods for the purpose of applying the preferential tariff treatment in accordance with this Agreement.

3. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered as non-originating when that product is incorporated as a material in another product.

4. The acquisition of originating status shall be fulfilled without interruption in the European Union or in India.

## ARTICLE 3.3

### Wholly obtained products

1. The following shall be considered as wholly obtained or wholly produced in a Party:

(a) mineral products and other naturally occurring substances extracted or taken in a Party, but not beyond the outer limits of the Party's territorial sea;

(b) plants, plant and vegetable products[1] grown, harvested, picked, or gathered in a Party;

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

(d) products obtained from live animals raised in a Party;

(e) products obtained from slaughtered animals born and raised in a Party;

(f) products obtained by hunting, trapping, gathering, or capturing conducted in a Party;

(g) products obtained from aquaculture in a Party if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, are born or raised from seed stock, such as eggs, fry, fingerlings, larvae, or other immature fish at a post-larval stage, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

(h) products obtained by fishing conducted in a Party, but not beyond the outer limits of the Party's territorial sea;

(i) products of sea fishing conducted outside any territorial sea by a vessel of a Party;

[1] Plants, plant and vegetable products include fruits, flowers, vegetables, trees, seaweed, fungi, algae, tobacco and live plants. Those plants, plant and vegetable products can be obtained in the territory of a Party, even if grown from seeds, bulbs, rhizomes, rootstock, cuttings, slips, grafts, shoots, buds, or other live parts of plants imported from a third country.

(j) products made aboard of a factory ship of a Party exclusively from products referred to in point (i);

(k) products other than fish, shellfish and other marine life extracted or taken from the seabed or subsoil outside any territorial sea, provided that the Party or person of that Party has the right to exploit such seabed or subsoil in accordance with international law;

(l) waste and scrap excluding precious metals derived from production in a Party;

(m) waste and scrap derived from consumption or used products collected in a Party, provided that those products are fit only for the recovery of raw materials; and

(n) products produced in a Party exclusively from the products specified in points (a) to (m) or from their derivatives at any stage of production.

2. The terms "vessel of a Party" and "factory ship of a Party" in points (i) and (j) of paragraph 1 mean a vessel and a factory ship which:

(a) is registered in a Member State or in India;

(b) sails under the flag of a Member State or of India; and

(c) meets one of the following conditions[1]:

  (i) one or more nationals of a Member State or of India own a substantial share of it, as defined by the law of a Party, and not below 50 %; or

  (ii) one or more juridical persons own it and those meet the following criteria:

    (A) have their head office and place of business in a Member State or in India; and

    (B) public entities or juridical persons of a Member State or of India own a substantial share of them, as defined by the law of a Party, and not below 50 %.

[1] Products of fishing or other products taken from the sea by chartered vessels sailing under the flag of India or a Member State are considered to originate in India or in the Member State in which the vessel is chartered, provided that the vessel is chartered by a natural person of a Member State or of India or a juridical person who fulfils the criteria set out in this point.

ARTICLE 3.4

Tolerances or *de minimis*

1. If a product does not satisfy the requirements of Annex 3-B (Product-specific rules of origin), including a change in tariff classification, due to the use of a non-originating material in its production, that product shall nevertheless be considered as originating in a Party, provided that:

(a) the total weight of non-originating materials used in the production of products classified under HS chapters 1 to 8 and HS chapters 10 and 13 does not exceed 5 % of the weight of the product;

(b) the total weight of non-originating materials used in the production of products classified under HS chapters 9, 11 and 12 and HS chapters 14 to 24, other than processed fishery products of HS chapter 16, does not exceed 10 % of the weight of the product;

(c) for a product classified under HS chapters 50 to 63, the tolerances or *de minimis* set out in Notes 6, 7 and 8 of Annex 3-A (Introductory notes to product-specific rules of origin) apply; or

(d) the total value of non-originating materials for all other products does not exceed 10 % of the ex-works price or Free-On-Board value (hereinafter referred to as "FOB value") of the product.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in Annex 3-B (Product-specific rules of origin).

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.3 (Wholly obtained products).

4. Where, in Annex 3-B (Product-specific rules of origin), the product-specific rule requires:

(a) "production in which all the materials of [one or more HS chapters] used are wholly obtained", paragraph 1 applies; or

(b) that the product is "WO", non-originating materials may be used in the production provided that the total value or weight of these non-originating materials does not exceed 1 % of the ex-works price or FOB value or of the weight of the product.

ARTICLE 3.5

Insufficient production or minimal operations and processes

1. Notwithstanding point (b) of Article 3.2(1) (Requirements for originating products), a product shall not be considered as originating in a Party if the production of the product in that Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations, such as drying, freezing or keeping in brine, where their sole purpose is to ensure that the products remain in good condition during transport and storage;

(b) breaking-up, assembly or change of packaging or packing;

(c) washing, cleaning, dry cleaning or removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textiles articles;

(e) simple painting and polishing operations;

(f) husking, partial or total polishing, bleaching and glazing of cereals and rice, milling of rice;

(g) operations to colour or flavour sugar or form sugar lumps, partial or total milling or grinding of sugar in solid form;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) simple sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;

(n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration of products or denaturation of products of HS chapter 22[1];

(o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts; or

(p) slaughter of animals.

2. For the purpose of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

## ARTICLE 3.6

### Cumulation of origin between the Parties

1. A product originating in a Party shall be considered as originating in the other Party if that product is used as a material in the production of another product in that latter Party.

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1 Making unfit for human consumption by the simple addition of toxic or foul-tasting substances.

2. Paragraph 1 does not apply if the production carried out in the other Party does not go beyond the operations referred to in Article 3.5(1) (Insufficient production or minimal operations and processes).

ARTICLE 3.7

Unit of qualification

1. For the purposes of this Chapter, the unit of qualification shall be the particular product which is considered as the basic unit when classifying the product under the Harmonized System.

2. For a consignment consisting of a number of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8

Accessories, spare parts, tools and informational or instructional material

1. This Article applies to accessories, spare parts, tools and informational or instructional material that:

(a) are classified and delivered with, but not invoiced separately from, the product; and

(b) are of the types, quantities and values which are customary for that product.

2. Accessories, spare parts, tools and informational or instructional material referred to in paragraph 1 shall be disregarded in determining the origin of the product, except for the purposes of calculating the value of non-originating materials, if a product is subject to a maximum value of non-originating materials as set out in Annex 3-B (Product-specific rules of origin).

ARTICLE 3.9

Packing materials and containers for shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether that product is originating in a Party.

## ARTICLE 3.10

### Packaging materials and containers for retail sale

Packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be disregarded in determining the origin of the product, except for the purposes of calculating the value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with Annex 3-B (Product-specific rules of origin).

## ARTICLE 3.11

### Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be considered as originating in a Party if all of their components are originating. If a set is composed of originating and non-originating components, the set as a whole shall be considered as originating in a Party if the value of the non-originating components does not exceed 10 % of the ex-works price or FOB value of the set.

ARTICLE 3.12

Neutral or indirect elements

In order to determine whether a product is originating in a Party, the following elements, which might be used in its production but not physically incorporated, shall be disregarded:

(a) fuel, energy, catalysts and solvents;

(b) plant, equipment, spare parts and materials used in the maintenance of equipment and buildings;

(c) machines, tools, dies and moulds;

(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 product; and

(g) any other element used in the production.

ARTICLE 3.13

Accounting segregation for fungible materials

1. For the purposes of this Article, "fungible materials" means materials that are interchangeable for commercial purposes, whose properties are essentially identical, and, once incorporated into the finished product, cannot be distinguished from one another for origin purposes.

2. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating and non-originating status.

3. Notwithstanding paragraph 2, originating and non-originating fungible materials may be used in the production of a product without being physically segregated during storage if an accounting segregation method or an inventory management method recognised under accounting principles generally accepted in the Party is used, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

4. An accounting segregation method referred to in paragraph 3 shall be applied in conformity with an inventory management method under the accounting principles that are generally accepted in the Party.

5. The accounting segregation method or inventory management method shall be any method that ensures that at any time no more materials receive originating status than would have been the case if the materials had been physically segregated.

ARTICLE 3.14

Returned products

If a product originating in a Party is exported from that Party to a third country and returns to that Party, it shall be considered as non-originating product unless the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation other than that necessary to preserve it in good condition while in that third country or while being exported.

ARTICLE 3.15

Transport

1. The preferential tariff treatment provided for under this Agreement applies only to originating products that have been transported:

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

(b) through one or more third countries and that have not been subjected to operations, other than the ones listed in paragraph 2, after their exportation from the exporting Party and prior to entering the customs territory of the importing Party, and provided that the originating products remain under customs control in each third country where the operations take place.

2. The operations referred to in point (b) of paragraph 1 shall be limited to the following:

(a) operations to preserve the originating products in good condition;

(b) relabelling, adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party;

(c) unloading and reloading;

(d) repacking;

(e) storage; and

(f) splitting or consolidating consignments.

3. In case of doubt as to whether the requirements provided for in paragraphs 1 and 2 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bill of lading, non-manipulation certificate, factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

## SECTION B

## ORIGIN PROCEDURES

### ARTICLE 3.16

### Claim for preferential tariff treatment

1. To benefit from the preferential tariff treatment for a product originating in the other Party, within the meaning of this Chapter, the importer shall make a claim for preferential tariff treatment indicating that the product qualifies as originating product. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for the compliance with the requirements provided for in this Chapter.

2. A claim for preferential tariff treatment shall be based on a proof of origin in the form of a declaration (hereinafter referred to as "Statement on Origin") that the product is originating, made out in accordance with Article 3.18 (Statement on Origin). In the European Union, a claim for preferential tariff treatment may also be based on the importer's knowledge that the product is originating.

3. The importer, for the purposes of claiming preferential tariff treatment based on a Statement on Origin as referred to in the first sentence of paragraph 2, shall:

(a) have a valid Statement on Origin in its possession at the time the claim for preferential tariff treatment referred to in paragraph 1 is made;

(b) provide a copy thereof to the customs authority of the importing Party, if required by that customs authority; and

(c) for India, make a declaration in the bill of entry that the products qualify as originating products and enter the details of the Statement on Origin in the bill of entry.

4. The importer claiming preferential tariff treatment on the basis of a Statement on Origin shall possess information other than the Statement on Origin to demonstrate that the product is originating, only to the extent that such information is made available by the exporter. For greater certainty, nothing in this paragraph shall be construed to require an exporter to share information that the exporter is not willing to share if requested by the importer.

5. For the purpose of enabling the importing Party to establish the authenticity of a Statement on Origin as referred to in paragraph 2, the exporting Party shall have an authentication mechanism at the date of entry into force of this Agreement. Each Party shall ensure that the modalities of such authentication mechanism follow the procedure set out in Annex 3-D (Authentication procedure for the Statement on Origin).

6. If an authentication mechanism pursuant to paragraph 5 is not operational in a Party at the date of entry into force of this Agreement, the issuing authority of the exporting Party shall issue certificates of origin as provided in Annex 3-E (Certification of Origin) which shall have the same effect as a Statement on Origin for determination of origin of the product. This arrangement shall remain in force until the authentication mechanism pursuant to paragraph 5 becomes operational in that Party. All other provisions of this Section apply *mutatis mutandis* to the Certificate of Origin.

## ARTICLE 3.17

### Time of the claim for preferential tariff treatment

1. The importer shall make a claim for preferential tariff treatment at the time of importation.

2. By way of derogation from paragraph 1, if the importer did not make a claim for preferential tariff treatment at the time of importation, or if the claim for preferential tariff treatment was denied on the ground that the Statement on Origin could not be authenticated in accordance with Article 3.16(5) (Claim for preferential tariff treatment), the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid, provided that:

(a) the claim for preferential tariff treatment is made no later than one year after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;

(b) the importer provides the basis for the claim as referred to in Article 3.16(2) (Claim for preferential tariff treatment); and

(c) the product would have been considered originating and would have satisfied all other applicable requirements within the meaning of Section A (Rules of origin) of this Chapter if it had been claimed by the importer at the time of importation.

3. Without prejudice to the time limit specified in point (a) of paragraph 2, the requirements applicable to the importer as set out in Article 3.16 (Claim for preferential tariff treatment) apply *mutatis mutandis* for the purpose of this paragraph.

ARTICLE 3.18

Statement on Origin

1. A Statement on Origin shall be made out by an exporter or a producer of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The person making the Statement on Origin shall be responsible for the correctness of the Statement on Origin and the information provided. Where the exporter is not the producer and makes out a Statement on Origin, the exporter shall ensure that it is based on information demonstrating that the product is originating, including information supplied by the producer.

2. The Statement on Origin must be accompanied by an invoice or any other commercial document that describes the products concerned in sufficient detail to enable them to be identified.

3. A Statement on Origin shall be made out in accordance with the template set out in Annex 3-C (Template of the Statement on Origin), in the English language. The declaration of the exporter in box 9 of Annex 3-C (Template of the Statement on Origin) shall be made out in one or more of the linguistic versions included in Appendix 3-C-1 (Language versions of the declaration by the exporter), at least one of which is English.

4. A Statement on Origin shall be valid for 12 months from the date of its completion.

5. A Statement on Origin may apply to a single consignment of one or more products imported into a Party.

6. If, at the request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonized System that fall within sections XV to XXI of the Harmonized System are imported by instalments, a single Statement on Origin for such products may be used in accordance with the requirements laid down by the customs authorities of the importing Party.

## ARTICLE 3.19

### Errors and discrepancies

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies, typing errors or formatting errors, in the Statement on Origin provided these do not create doubt as to the originating status of the product.

ARTICLE 3.20

Third party invoicing

The customs authority of the importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer of a product or was issued in a third country.

ARTICLE 3.21

Importer's knowledge

For the purposes of a claim for preferential tariff treatment that is made pursuant to the second sentence of Article 3.16(2) (Claim for preferential tariff treatment), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.

ARTICLE 3.22

Record keeping requirements

1. For a minimum of three years after the date on which the claim for preferential tariff treatment was made pursuant to Article 3.16(2) (Claim for preferential tariff treatment) or Article 3.17(2) and (3) (Time of the claim for preferential tariff treatment), or such longer period as required by the laws and regulations of the importing Party, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:

(a) if the claim was based on a Statement on Origin, the Statement on Origin completed by the exporter along with documents or information received from the exporter as well as evidence of compliance with the requirements set out in Article 3.15 (Transport). The importer shall keep relevant records of such importation in accordance with the laws and regulations of the importing Party; and

(b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements to obtain originating status.

2. An exporter or producer who has completed a Statement on Origin shall, for a minimum of five years, or such longer period as required by the laws and regulations of the exporting Party, after the date of completion of the Statement on Origin, keep a copy of that Statement on Origin and all other records demonstrating that the product satisfies the requirements to obtain originating status, including, where applicable, information from the suppliers.

3. If the Statement on Origin referred to in paragraph 2 is made on the basis of information provided by suppliers, those suppliers shall be required to maintain records in accordance with paragraph 2, if those records are not in possession of the exporters.

4. The records to be kept in accordance with this Article may be held in electronic format.

## ARTICLE 3.23

### Waiver of procedural requirements

1. A Party may, in accordance with its laws and regulations, waive the requirement to present a Statement on Origin as referred to in Article 3.16 (Claim for preferential tariff treatment), for low value consignments of originating products from the other Party and for originating products forming part of the personal luggage of a traveller coming from the other Party.

2. A Party may exclude any importation from the provisions of paragraph 1 when the importation forms part of a series of importations which the customs authority of the importing Party reasonably considers to have been undertaken or carried-out for the purpose of evading the requirements of this Chapter related to the Statement on Origin.

3. Each Party may set value limits for products referred to in paragraph and shall exchange information regarding those limits.

## ARTICLE 3.24

## Verification

1. The customs authority of the importing Party may conduct a verification on whether a product is originating or the other requirements of this Chapter are satisfied, on the basis of risk assessment methods, which may include reasonable doubts or random selection, as to the originating status of the products concerned or the fulfilment of the other requirements of this Chapter. Such a verification may be conducted by means of a request for information to the importer who made the claim for preferential tariff treatment.

2. If the claim for preferential tariff treatment was based on a Statement on Origin completed by an exporter or a producer, the information requested pursuant to paragraph 1 shall cover no more than the following elements:

(a) that Statement on Origin; and

(b) where necessary, the information elements detailed in paragraph 9.

3. The importer shall, no later than 10 working days after the date of the request made pursuant to paragraph 1, provide to the customs authority of the importing Party the Statement on Origin and the information requested pursuant to point (b) of paragraph 2 in the importer's possession, subject to Article 3.16(4) (Claim for preferential tariff treatment).

4. Upon the expiry of the period of 10 working days referred to in paragraph 3, if the customs authority of the importing Party considers that additional information is required, the importer shall be provided with additional 30 days to submit that information. The importer shall provide the information within the 30-day period where such information has been made available by the exporter, and where such information has not been made available, the importer shall inform the customs authority that it is not in a position to provide that information.

5. If the importer replies that it is not in position to provide that information referred to in paragraph 4 or if, upon the expiry of the 30-day period, the information provided by the exporter is insufficient to determine that the product is originating, the customs authority of the importing Party may submit a written request to the competent authority of the exporting Party pursuant to Article 3.25 (Administrative cooperation).

6. If the claim for preferential tariff treatment was based on the importer's knowledge in accordance with the second sentence of Article 3.16(2) (Claim for preferential tariff treatment), the information requested pursuant to paragraph 1 shall cover the information elements detailed in paragraph 9. The importer shall provide the information to the customs authority of the importing Party no later than 90 days after the date of the request made under paragraph 1.

7. After having received the requested information in accordance with paragraph 6, the customs authority of the importing Party conducting the verification may request the importer to provide additional information, within 90 days of that request, if that customs authority considers that such additional information is necessary in order to verify the originating status of the product or whether the other requirements of this Chapter are satisfied. The customs authority of the importing Party may request the importer to provide specific information or documentation, if appropriate.

8. For greater certainty, Article 3.25 (Administrative cooperation) does not apply when the verification is conducted on a claim for preferential treatment based on the importer's knowledge.

9. The information elements referred to in paragraphs 2 to 7 may be requested by the importing Party as appropriate and shall include no more than the following:

(a) if the origin is determined pursuant to point (a) of Article 3.2(1) (Requirements for originating products), the applicable category (such as harvesting, mining or fishing) and the place of production;

(b) if the origin is determined pursuant to point (b) of Article 3.2(1) (Requirements for originating products) read with Annex 3-A (Introductory notes to product-specific rules of origin) and Annex 3-B (Product specific rules of origin), Article 3.2(3) (Requirements for originating products), Article 3.6 (Cumulation of origin between the Parties), information on the origin of the materials used relevant to demonstrate the origin of the product pursuant to points (c), (d), (e) and (f) of this paragraph;

(c) if the origin criterion is based on a change in tariff classification, a list of all the non-originating materials used in the production of the product in a Party, including their tariff classification (in 2-, 4- or 6-digit format, depending on the relevant product-specific rule of origin);

(d) if the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that final product;

(e) if the origin criterion is based on a specific production process, a description of that specific production process;

(f) if the origin criterion is based on "production from non-originating material of any heading", information on insufficient production or minimal operations and processes pursuant to Article 3.5 (Insufficient production or minimal operations and processes);

(g) if the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the production of that final product;

(h) information on any tolerances relied on pursuant to Article 3.4 (Tolerances or *de minimis*);

(i) information relating to compliance with the non-alteration rule established pursuant to Article 3.15 (Transport); and

(j) supporting documentation, where appropriate.

10. The importer may add any other information considered relevant for the purposes of verification.

11. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, the release of the products shall be offered to the importer subject to appropriate precautionary measures, including guarantees as provided for in the importing Party's laws and regulations. As soon as the customs authority of the importing Party has ascertained that the products concerned are originating and that the other requirements of this Chapter are satisfied, it shall terminate the suspension and grant preferential tariff treatment in accordance with its laws and regulations.

## ARTICLE 3.25

### Administrative cooperation

1. If the claim for preferential tariff treatment was based on a Statement on Origin, the Parties shall cooperate, through the competent authority of each Party, in verifying whether a product is originating and is in compliance with the other requirements provided for in this Chapter.

2. After having first requested information in accordance with Article 3.24(1) (Verification), the customs authority of the importing Party conducting the verification may also request information from the competent authority of the exporting Party, if the customs authority of the importing Party conducting the verification considers that additional information is necessary in order to verify the originating status of the product or to verify that the other requirements provided for in this Chapter have been met. The request for information shall include the following elements:

(a) the Statement on Origin;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter;

(d) the subject and scope of the verification; and

(e) any relevant documentation.

3. As part of the request for information referred to in paragraph 2, the customs authority of the importing Party may request the competent authority of the exporting Party to provide information listed under Article 3.24(9) (Verification), as applicable, with specific documentation and information related to the originating status of the product or the other requirements provided for in this Chapter.

4. Where the customs authority of the importing Party has *prima facie* evidence that an importer has suppressed material facts, made a wilful misstatement or colluded with the exporter or producer or any other person with the intention of wrongfully obtaining preferential tariff treatment under this Chapter, the customs authority of the importing Party may request the competent authority of the exporting Party to prioritise the verification request. Upon receipt of such a request, the competent authority of the exporting Party shall use its best endeavours to accord priority to the verification.

5. The competent authority of the exporting Party, upon receipt of the request for information referred to in paragraph 2 and depending on the scope of the request, may undertake to verify the originating status of the product by one or more of the following means:

(a) request information and documentation from the exporter, producer or supplier; or

(b) request an examination by:

   (i) calling for any evidence from the exporter, producer or supplier; or

   (ii) undertaking a verification visit of the premises of the exporter, producer or supplier.

6. Without prejudice to paragraph 7, the competent authority of the exporting Party shall respond no later than seven months after the date of receipt of the request referred to in paragraph 2 to the customs authority of the importing Party with the following:

(a) the description of the product that is subject to verification and the tariff classification relevant to the application of this Chapter;

(b) a description and explanation of the production process to substantiate the originating status of the product;

(c) information on the manner in which verification pursuant to paragraph 5 was conducted;

(d) inputs in accordance with paragraph 7; and

(e) relevant documentation, information and supporting evidence obtained during the verification, where available.

Based on the information referred to in points (a) to (e), the competent authority of the exporting Party shall also provide a reasoned opinion on the originating status of the product.

7. The competent authority of the exporting Party may decline to provide information to the customs authority of the importing Party if that information is considered as confidential by the exporter, producer or supplier. However, in such cases, the exporter, producer or supplier shall provide reasons for treating the information as confidential. These reasons shall be duly recorded in the verification findings by the competent authority of the exporting Party. In such cases, the competent authority of the exporting Party shall confirm that it has reviewed the information requested by the importing Party and shall also list the sources of information reviewed, stating clearly whether the information supports the claim for preferential tariff treatment.

8. The customs authority of the importing Party shall not deny preferential treatment for the sole reason that such confidential information is not provided to it but shall take into account the information provided by the competent authority of the exporting Party as well as its independent findings or investigation before making a final decision whether to grant preferential treatment, where appropriate.

9. In exceptional circumstances, if, after receiving the response provided under paragraph 6 pursuant to a request made under paragraph 2, the customs authority of the importing Party remains unable to determine the originating status of the products, it may request that the competent authority of the exporting Party conduct a verification visit to the premises of the exporter, producer or supplier, with the participation of up to two duly authorised officials from the customs authority of the importing Party as observers.

10. The importing Party shall provide detailed reasons for the requested visit referred to in paragraph 10 and may specify the specific parameters to be verified during the visit. The competent authority of the exporting Party shall determine the reasonable conditions for conducting the visit, including those relating to observer participation. If the importing Party disagrees with the conditions proposed, the exporting Party shall conduct the verification visit, taking into account the detailed reasons and specific parameters communicated by the importing Party. In the event that the request for the verification visit is not accepted, the competent authority of the exporting Party shall provide the customs authority of the importing Party with the reasons.

11. The request for verification visit under paragraph 9 shall be made within 30 days from the date of receipt of the response provided under paragraph 6. The competent authority of the exporting Party shall respond to such request within 30 days. The competent authority of the exporting Party shall, within 90 days from the date of the verification visit, provide an updated response pursuant to paragraph 6 incorporating the outcome of the visit. If the competent authority of the exporting Party requires additional time to provide such updated response, the period shall be extended by no more than 30 days with prior communication to the importing Party.

12. Notwithstanding the response indicating the originating status in accordance with paragraph 6 or 11, as applicable, where the customs authority of the importing Party considers that sufficient justification exists to deny preferential tariff treatment, it shall notify the competent authority of the exporting Party no later than 30 days from the date of receipt of the response provided pursuant to paragraph 6 or 11, as applicable. If the importing Party is unable to notify the exporting Party within 30 days, it may issue the notification at the earliest opportunity.

13. If a notification pursuant to paragraph 12 is made, the exporting Party may request consultations with the other Party within 30 days after the date of the notification. If the Parties agree to enter into consultations, such consultations shall be completed within two months from the date of the request. The period for consultations may be extended by mutual agreement between the Parties. Each Party shall inform the other Party of the authorities that will participate in the consultations.

14. After the notification pursuant to paragraph 12 is made, the customs authority of the importing Party shall retain the right to deny the preferential tariff treatment if it has a sufficient justification for doing so taking into account the information provided by the competent authority of the exporting Party together with its own independent findings or investigations in any of the following circumstances:

(a) the exporting Party does not request consultations within one month of receipt of the notification issued pursuant to paragraph 12 and the information provided by the competent authority of the exporting Party is inadequate to confirm that the product is originating;

(b) where the exporting Party has requested consultations and, upon the expiry of the period for consultations referred to in paragraph 13, the information provided by the competent authority of the exporting Party is inadequate to confirm that the product is originating; or

(c) in exceptional circumstances, where the customs authority of the importing Party determines, prior to the expiry of the period for consultations referred to in paragraph 13, that immediate action is necessary. The importing Party shall notify the reasons to the competent authority of the exporting Party.

15. If the customs authority of the importing Party decides to deny the preferential tariff treatment, it shall inform the importer of the reasons. The customs authority of the importing Party shall also notify its decision to the competent authority of the exporting Party without undue delay.

16. Each Party shall notify the other Party of the contact details of the competent authorities and issuing authorities and shall notify the other Party of any change to those contact details no later than 30 days after the date of the change.

17. The competent authorities responsible for initiating verifications are the customs authorities. The competent authorities responsible for conducting verifications are:

(a) for the European Union, the customs authority; and

(b) for India, the Department of Commerce, or any other designated authority.

ARTICLE 3.26

Denial of preferential tariff treatment

1. Following the verification conducted pursuant to Article 3.24(1) (Verification), the customs authority of the importing Party may deny the preferential tariff treatment, without recourse to administrative cooperation pursuant to Article 3.25 (Administrative cooperation), in the following cases:

(a) the products for which preferential tariff treatment has been claimed are not the same as those mentioned in the Statement on Origin;

(b) the Statement on Origin in possession of the importer has not been made out by an exporter holding a valid unique identification number in accordance with the laws and regulations of the exporting Party;

(c) the Statement on Origin has not been made out in accordance with the template set out in Annex 3-C (Template of the Statement on Origin), without prejudice to Article 3.19 (Errors and discrepancies);

(d) the Statement on Origin has not been authenticated as stipulated in Annex 3-D (Authentication procedure for the Statement on Origin);

(e) the importer relinquishes the claim; or

(f) the requirements set out in Article 3.17(2) and (3) (Time of the claim for preferential tariff treatment) are not met.

2. Following the verification pursuant to Article 3.24(2) (Verification), the customs authority of the importing Party may deny preferential tariff treatment if no Statement on Origin has been provided as per the timelines set out in Article 3.24(3) to (5) (Verification).

3. Following the verification under Article 3.24(6) to (9) (Verification), the customs authority of the importing Party may deny preferential tariff treatment:

(a) if no reply has been provided by the importer as per the timelines set out in Article 3.24(6) and (7) (Verification); or

(b) if the information provided by the importer in accordance with Article 3.24 (6) and (7) (Verification) is inadequate to confirm that the product is originating.

4. Following a request for information pursuant to Article 3.25(2) (Administrative cooperation), the customs authority of the importing Party may deny preferential tariff treatment:

(a) if no reply has been provided by the customs authority of the exporting Party as per the timelines set out in Article 3.25(6) (Administrative cooperation);

(b) if the competent authority of the exporting Party has confirmed that the product is not originating;

(c) if the exporting Party does not provide a response within the timelines set out in Article 3.25(11) (Administrative cooperation); or

(d) in accordance with Article 3.25(14) (Administrative cooperation)).

5. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with or fails to demonstrate compliance with the requirements of Article 3.15 (Transport).

ARTICLE 3.27

Temporary suspension of preferential treatment

1. If, following administrative cooperation and the procedures laid down in the Article 3.25 (Administrative cooperation), a Party establishes that the exporter or producer has persistently and deliberately made out incorrect Statements on Origin, the Parties shall consult, at the request of the importing Party, with a view for the exporting Party to take appropriate measures.

2. Upon the expiry of three months from the date of request for consultations, where the exporting Party has not initiated any appropriate measure to prevent the exporter or producer from making out incorrect Statements on Origin, the customs authority of the importing Party may decide to temporarily suspend preferential tariff treatment to that exporter or producer for the concerned product or products.

3. If the importing Party intends to temporarily suspend preferential tariff treatment in accordance with paragraph 2, it shall notify the exporting Party at least 15 days prior to the commencement of any suspension. This notification shall include the following:

(a) the name of the exporter or producer and their reference number;

(b) reasons for the intention to suspend preferential tariff treatment;

(c) description of the product or products subject to suspension; and

(d) any other relevant information.

4. The importing Party and exporting Party shall coordinate on the measures necessary for the restoration of preferential tariff treatment and on the time period for which the temporary suspension is to be in effect. The temporary suspension shall apply only for a period necessary to address the situation referred to in paragraph 1 and in any case no longer than six months or any other period that the Parties agree.

5. If, following administrative cooperation and the procedures laid down in Article 3.25 (Administrative cooperation), a Party establishes that two or more exporters or producers of the other Party have persistently and deliberately made out Statements on Origin wrongly for the same product at the Harmonized System classification level and this same product of these exporters or producers accounts for more than half of the preferential imports of the same product in value terms from the exporting Party over a period of one year prior to the first verification request, then the importing Party may submit the matter to the Joint Committee with a view to temporarily suspend preferential treatment for all imports of that product from the exporting Party.

6. The Joint Committee shall discuss the matter and recommend within six months whether to temporarily suspend the preferential tariff treatment for this product. The importing Party may only suspend preferential treatment for this product if recommended by the Joint Committee.

7. The temporary suspensions shall apply only for a period necessary to address the situation referred to in paragraph 5 and to protect the financial interests of the Party concerned, and in any case no longer than six months or any other period that the Parties agree.

8. In the cases established in paragraph 5, where the importing Party has made a finding, based on objective information, that large-scale and systematic breaches or circumventions of the provisions of this Chapter have been committed, and where the exporting Party repeatedly refuses or otherwise fails to cooperate, Article 2.17 (Specific measures concerning the management of preferential tariff treatment) applies.

9. Each Party shall inform, in accordance with its internal procedures, its importers and exporters about any decision concerning temporary suspensions referred to in paragraph 2 or 6.

## ARTICLE 3.28

### Confidentiality

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of any information provided to it by the other Party pursuant to this Chapter and protect that information from disclosure.

2. Confidential business information obtained from the exporter by the competent authority of the exporting Party or by the importing Party through the application of Article 3.24 (Verification) and Article 3.25 (Administrative cooperation) shall not be disclosed unless otherwise provided for in this Chapter.

3. Information obtained by the authorities of the importing Party may only be used by such authorities for the purposes of this Chapter. The use of information collected pursuant to this Chapter in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws or regulations implementing this Chapter is allowed. In such case, the person or Party who provided the information shall be notified, where possible, in advance.

4. Where one of the Parties wishes to use such information for other purposes than for the purposes of this Chapter, it shall obtain the prior written consent of the person or Party which provided the information. Such use shall then be subject to any restrictions laid down by that person or Party.

## ARTICLE 3.29

### Penalties

Each Party shall adopt or maintain measures to impose, where appropriate, civil penalties, administrative penalties and criminal sanctions for violations of its laws or regulations relating to the provisions of this Chapter.

## SECTION C

## FINAL PROVISIONS

### ARTICLE 3.30

### Ceuta and Melilla

1. Products originating in India, when imported into Ceuta and Melilla, shall in all respect be subject to the same customs treatment under this Agreement, as that which is applied to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. India shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs treatment as that which is granted to products imported from and originating in the European Union.

2. The rules of origin and origin procedures referred to in this Chapter apply *mutatis mutandis* to products exported from India to Ceuta and Melilla and to products exported from Ceuta and Melilla to India.

3. Ceuta and Melilla shall be considered as a single territory.

4. The exporters shall enter "India" or "Ceuta and Melilla" in box 9 of the template of the Statement on Origin in Annex 3-C (Template of the Statement on Origin), depending on the origin of the product.

5. The customs authority of the Kingdom of Spain shall be responsible for the application and implementation of this Chapter in Ceuta and Melilla.

6. The European Union shall notify India promptly on any changes that may affect the customs treatment provided by this Article. The Committee on Customs and Rules of Origin shall, on the request of either Party, meet to discuss these changes and seek to find a mutually satisfactory solution.

## ARTICLE 3.31

### Committee on Customs and Rules of Origin

1. The Committee on Customs and Rules of Origin is established pursuant to Article 18.3(1) (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees) and Article 4.20 (Committee on Customs and Rules of Origin), the Committee on Customs and Rules of Origin may adopt explanatory notes providing guidance to facilitate effective implementation of this Chapter.

2. The Committee on Customs and Rules of Origin shall consider periodic Harmonized System transposition of the product-specific rules as part of the preparatory technical work for the adoption of decisions by the Joint Committee.

## ARTICLE 3.32

### Transitional provisions for products in transit or storage

1. The customs authority of the importing Party shall grant preferential tariff treatment for an originating product of the exporting Party, if such product complies with the provisions of this Chapter and, on the date of entry into force of this Agreement, it:

(a) is in transit from the exporting Party to the importing Party; or

(b) has not yet been cleared for home consumption in the importing Party.

2. A product referred to in paragraph 1 is subject to an importer making a claim for preferential tariff treatment in accordance with Article 3.16 (Claim for preferential tariff treatment), within 12 months of the entry into force of this Agreement.

## CHAPTER 4

## CUSTOMS AND TRADE FACILITATION

### ARTICLE 4.1

### Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties shall reinforce cooperation in this area with a view to ensuring that the relevant laws and regulations and customs procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

2. To this end, the Parties agree that the relevant laws and regulations shall be non-discriminatory and that customs procedures shall be based on the use of effective and efficient methods and controls to combat fraud and to promote legitimate trade.

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

ARTICLE 4.2

Customs co-operation and mutual administrative assistance

1. For the purposes of this Chapter, "customs laws and regulations" means any legal or regulatory provision applicable in the territory of either Party, that governs the entry or import of goods, the exit or export of goods, the transit of goods and the placing of goods under any other customs regime or procedure, and that may include prohibitions, restrictions or controls which are enforced by the customs authority of each Party.

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

3. The Parties shall develop cooperation, including, by:

(a) exchanging information concerning customs laws and regulations, their implementation and customs procedures, particularly in the following areas:

   (i) simplification and modernisation of customs procedures;

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

   (iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management.

(b) working together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as "SAFE Framework"), adopted by the WCO in June 2005;

(c) considering developing joint initiatives relating to import, export and other customs procedures including technical assistance, as well as to ensure an effective service to the business community;

(d) strengthening their cooperation in the field of customs in international organisations such as the WTO and the WCO;

(e) endeavouring to harmonise their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the WCO Data Model;

(f) exchanging, where relevant and appropriate, through a structured and recurrent communication between the customs authorities of the Parties, certain categories of customs-related information for specific purposes, namely improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collection or safety and security, and facilitating legitimate trade; such exchange shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the CCMAA Agreement and Article 4.3 (Additional measures of mutual administrative assistance in customs matters) of this Agreement;

(g) strengthening cooperation between the customs authorities of the Parties on risk management techniques, including sharing best practices, and where appropriate, risk information and control results. Where relevant and appropriate, the Parties shall also consider mutual recognition of risk management techniques, risk standards and security controls;

(h) establishing, where relevant and appropriate, mutual recognition of authorised economic operator programmes and customs controls, including equivalent trade facilitation measures; and

(i) fostering cooperation and coordination between customs and other government authorities or agencies especially in relation to authorised economic operator programmes. This collaboration may be achieved, among others, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

ARTICLE 4.3

Additional measures of mutual administrative assistance in customs matters

1. The Parties reaffirm their respective commitments in relation to mutual administrative assistance in customs matters in accordance with the relevant provisions of the CCMAA Agreement.

2. The Parties may exchange information covered by Article 5 of the CCMAA Agreement:

(a) on an automatic basis; or

(b) in advance of the arrival of consignments in the territory of the other Party.

3. The Parties may establish arrangements on the type of specific information they wish to exchange and on the format and the frequency of transmission, to implement the exchanges under paragraph 2 of this Article.

ARTICLE 4.4

Protection of personal data

Where personal data is exchanged pursuant to this Chapter, the transfer of such personal data shall take place in accordance with the data protection laws and regulations of the Party providing the data. Each Party shall inform the other Party about its relevant data protection laws and regulations.

ARTICLE 4.5

Inter-agency cooperation relating to trade in goods

1. Each Party shall ensure that its authorities and agencies responsible for control and procedures dealing with importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to protect their financial interests, fight against illegal trade, ensure safety and security at external borders, while enhancing legitimate trade.

2. In establishing or maintaining its single window under paragraph 4.1 of Article 10 of the Trade Facilitation Agreement, each Party shall endeavour to enable through a single entry point the electronic submission of the documentation or data that such Party requires for importation, exportation, or transit of goods through its territory for all its participating authorities or agencies.

3. With respect to paragraphs 1 and 2, the Parties shall endeavour to share their respective experiences.

4. With respect to paragraph 2, the Parties shall endeavour to work towards a harmonisation, to the extent practicable, of data elements and customs processes.

ARTICLE 4.6

Customs laws, regulations and procedures

1. Each Party shall ensure that its customs laws, regulations and procedures shall be based on:

(a) the international instruments and standards applicable in the area of customs and trade, including the substantive elements of the International Convention on the Simplification and Harmonisation of Customs Procedures, done at Kyoto on 18 May 1973, including the Protocol of Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures done at Brussels on 26 June 1999 ("Revised Kyoto Convention"), the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as well as the SAFE Framework and to the extent possible the WCO Data Model;

(b) the protection and facilitation of legitimate trade through effective enforcement and compliance of legislative requirements;

(c) customs laws and regulations that are proportionate and non-discriminatory, avoid unnecessary burdens on economic operators, provide for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensure safeguards against fraud and illicit activities; and

(d) rules that ensure that any penalty imposed for breaches of customs laws, regulations and procedures are proportionate and non-discriminatory and that their application shall not unduly delay the release of the goods.

2. Each Party should periodically review its customs laws, regulations and procedures. Customs procedures should also be applied in a manner that is predictable, consistent and transparent.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

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

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

ARTICLE 4.7

Release of goods

Each Party shall adopt or maintain customs procedures that:

(a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods on arrival; and

(c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not made prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

## ARTICLE 4.8

### Simplified customs procedures

Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such measures may include:

(a) customs declaration containing a reduced set of data or supporting documents; or

(b) periodical customs declaration or procedures for the determination and payment of customs duties and taxes covering multiple imports within a specific period, after the release of those imported goods.

## ARTICLE 4.9

### Transit and transhipment

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

2. Each Party shall, where relevant and appropriate, promote and implement regional transit arrangements with a view to facilitating trade.

3. Each Party shall ensure cooperation and coordination between all authorities and agencies concerned in its territory to facilitate traffic in transit.

4. Each Party shall, subject to its laws and regulations, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 4.10

Risk management

1. Each Party shall adopt or maintain a risk management system for customs control.

2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

ARTICLE 4.11

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

4. The Parties shall use the result of a post-clearance audit in applying risk management.

ARTICLE 4.12

Authorised economic operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria, hereinafter referred to as Authorised Economic Operators ("AEOs").

2. The specified criteria to qualify as an AEO shall be related to compliance with requirements specified in customs laws, regulations and procedures of a Party. The specified criteria, which shall be published, may include:

(a) the absence of any serious or repeated infringements of customs laws and regulations and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of its operations and of the flow of goods, by means of a system of managing commercial records and, where appropriate, transport records, which allows for appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables the applicant to fulfil its commitments, with due regard to the characteristics of the type of business activity concerned;

(d) proven competences or professional qualifications directly related to the activity carried out; and

(e) appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that it maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of its business partners.

3. The specified criteria to qualify as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of small and medium-sized enterprises.

4. The partnership programme shall include the following benefits:

(a) a low rate of physical inspections and examinations, as appropriate;

(b) prior notification in case of selection for physical or other customs control;

(c) priority treatment if selected for customs control;

(d) rapid release time as appropriate;

(e) deferred payment of duties, taxes, fees and charges;

(f) the use of comprehensive guarantees or reduced guarantees;

(g) a single supplementary customs declaration for all imports or exports in a given period; and

(h) clearance of goods at the premises of the AEO or another place authorised by customs authorities.[1]

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[1] A benefit listed in points (a) to (h) of paragraph 4 will be deemed to be provided to AEOs if it is generally available to all operators which means once the benefit is given to all operators, by definition, it is given to AEOs as well so it may not be exclusive to AEOs.

ARTICLE 4.13

Publication and availability of information

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, and as far as possible through electronic means, new laws, regulations and general procedures relating to customs and trade facilitation matters, prior to the application of any such laws, regulations and procedures, and shall promptly publish amendments to and interpretations of such laws, regulations and procedures. This shall include:

(a) relevant notices of an administrative nature;

(b) importation, exportation and transit procedures (including port, airport and other entry-point procedures) and required forms and documents;

(c) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(d) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(e) rules for the classification or valuation of products for customs purposes;

(f) laws, regulations and administrative rulings of general application relating to rules of origin;

(g) import, export or transit restrictions or prohibitions;

(h) penalty provisions against breaches of import, export or transit formalities;

(i) appeal procedures;

(j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(k) procedures relating to the administration of tariff quotas;

(l) hours of operation and operating procedures for customs offices at ports and border crossing points; and

(m) points of contact for information enquiries.

2. Each Party shall ensure that there is a reasonable period of time between the publication of new or amended customs laws, regulations and procedures, and fees or charges and their entry into force.

3. Each Party shall make available, and update as appropriate, the following through the internet:

(a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export, and for transit;

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and

(c) contact information on enquiry points.

4. Each Party shall establish or maintain one or more enquiry points to answer, within a reasonable time, enquiries of governments, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries.

5. Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraph 2, measures applied in urgent circumstances, or minor changes to the law of a Party are each excluded from paragraph 2.

ARTICLE 4.14

Advance rulings

1. Each Party, through its customs authorities, shall issue advance rulings, on application by economic operators, setting out the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing or in electronic format in a time bound manner and shall contain all necessary information pursuant to the laws and regulations of the issuing Party.

2. Advance rulings shall be valid for a period of at least three years from the start date of its validity unless the decision in the ruling no longer conforms to the law or the facts or circumstances supporting the original ruling have changed.

3. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

4. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

5. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. If the Party revokes, modifies, invalidates or annuls an advance ruling with retroactive effect, it may only do so if the ruling was based on incomplete, incorrect, false or misleading information.

6. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.

7. Each Party shall provide, upon written request from the holder, a review of the advance ruling or of the decision to amend, revoke or invalidate it.

8. Each Party shall make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.

9. Advance rulings shall be issued with regard to:

(a) the tariff classification of goods;

(b) the origin of goods; and

(c) any other matter the Parties may agree upon.

ARTICLE 4.15

Customs valuation

1. Each Party shall determine the customs value of goods of the other Party imported into its territory in accordance with the Article VII of GATT 1994 including its Notes and Supplementary Provisions, and Articles 1 to 17 of the Customs Valuation Agreement, including its Interpretative Notes. These provisions are hereby incorporated into and made part of this Agreement, *mutatis mutandis*. Minimum customs values shall not be used.

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

## ARTICLE 4.16

### Customs brokers

The Parties agree that their respective customs laws and regulations and procedures shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. Each Party shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

## ARTICLE 4.17

### Review and appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal or review against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.

2. Appeal or review shall include:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued, as applicable, the administrative action, ruling or decision; or

(b) a judicial appeal or review of, as applicable, the administrative action, ruling or the decision.

3. Each Party shall ensure that, in a case where the administrative actions, rulings and decisions on appeal or review provided for in point (a) of paragraph 2 are not given within the period of time provided for in its laws and regulations or without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority pursuant to the laws and regulations of that Party.

4. Each Party shall ensure that the petitioner is provided with the reasons for the administrative actions, rulings and decisions, so as to enable such a person to have recourse to appeal or review procedures where necessary.

## ARTICLE 4.18

### Relations with the business community

The Parties agree:

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

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

ARTICLE 4.19

Temporary admission

1. For the purposes of this Article, the term "temporary admission" means the customs procedure under which certain goods, including means of transport, can be brought into a customs territory conditionally relieved from payment of import duties and taxes, and, in case of the use of the ATA carnet, also without application of import prohibitions or restrictions of economic character. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change, except normal depreciation due to the use made of them.

2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes, and, in case of the use of the ATA carnet, also without application of import restrictions or prohibitions of economic character, as provided for in its laws and regulations, to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events (goods intended for display or demonstration at an event; goods intended for use in connection with the display of foreign products at an event; equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses);

(b) professional equipment (equipment for the press, for sound or television broadcasting);

(c) samples, advertising films, recordings, goods used to carry out tests and goods subject to tests; containers, packing or packaging and pallets whether or not filled with goods all of which are durable, reusable and that are in use or to be used in the shipment of goods in international traffic and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container;

(d) goods imported exclusively for educational, or scientific purposes or cultural activities and events;

(e) personal effects (all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes); goods imported for sports purposes;

(f) goods imported for humanitarian purposes by the competent authorities in the territory of temporary admission; and

(g) animals imported for participation in shows, exhibitions, contests, competitions or demonstrations, entertainment, exercise of function (such as police dogs or horses, detector or sniffer dogs, dogs for the blind or guide dogs).

3. Each Party shall grant temporary admission, with total or partial conditional relief from import duties and taxes and, in case of the use of the ATA carnet, also without application of import restrictions or prohibitions of economic character, as provided for in its laws and regulations, to the following goods:

(a) goods imported in connection with a manufacturing operation;

(b) any other professional equipment necessary to carry out a trade or profession; and

(c) tourist publicity material (goods imported for the purpose of encouraging the public to visit another foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there).

4. Each Party shall, for the temporary admission of the goods referred to in paragraph 2 and regardless of their origin, provide for conditional relief as per the laws and regulations of that Party, or accept ATA carnets issued in the other Party, endorsed there and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the customs territory of the importing Party.

ARTICLE 4.20

Committee on Customs and Rules of Origin

1. The Committee on Customs and Rules of Origin is established pursuant to Article 18.3(1) (Specialised committees) and shall be responsible for the matters covered in this Chapter, Chapter 3 (Rules of origin and origin procedures) and the provisions on customs border enforcement of intellectual property rights, customs valuation, fees and charges, and the customs-related aspects of repaired goods and pre-shipment inspection covered by this Agreement, including Article 2.9 (Fees and charges), Article 2.10 (Repaired goods), Article 2.12 (Pre-shipment inspections), Article 10.55 (Border measures), Article 10.56 (*Ex officio* action) and Article 10.57 (Consistency with GATT 1994 and TRIPS Agreement).

2. In addition to the functions specified in Article 18.4 (Functions of the specialised committees) and Article 3.31 (Committee on Customs and Rules of Origin), the Committee on Customs and Rules of Origin shall be competent to identify areas for improvement in their implementation and operation, and to seek appropriate ways and methods to reach mutually agreed solutions on any customs matter that may arise.

3. The Committee on Customs and Rules of Origin may adopt decisions necessary to implement the cooperation activities listed in Article 4.2(3) (Customs co-operation and mutual administrative assistance), in particular those envisaged in points (f) and (i) relating to exchange of customs related information to improve risk management and AEO programmes, those listed in Article 4.3(3) (Additional measures of mutual administrative assistance in customs matters), as well as those on customs risk standards and controls, customs security measures, on advanced rulings, on common approaches to customs valuation and on other issues related to the implementation of this Chapter, as deemed appropriate.

4. The Committee on Customs and Rules of Origin shall ensure coherence and consistency in the implementation of customs matters between the Parties. Where appropriate, such customs matters may be taken up, as applicable, within the scope of the Joint Customs Cooperation Committee established under the CCMAA Agreement.

CHAPTER 5

Sanitary and Phytosanitary measures

ARTICLE 5.1

Objectives

The objectives of this Chapter are:

(a) to reinforce the implementation of the SPS Agreement and international standards, guidelines and recommendations developed by relevant international organisations applicable to trade between the Parties;

(b) to protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that sanitary and phytosanitary (hereinafter referred to as "SPS") measures imposed by each Party do not create unjustified barriers to trade;

(c) to provide a means to strengthen communication, consultation, cooperation and resolution of SPS issues that may affect trade between the Parties and of other agreed matters of interest to the Parties under this Chapter; and

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

ARTICLE 5.2

Scope

This Chapter applies to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 5.3

General provisions

1. The Parties reaffirm their rights and obligations under the SPS Agreement.

2. Each Party shall apply the principles of the SPS Agreement in the development or application of any SPS measure with the intent to facilitate trade between the Parties while protecting human, animal or plant life or health in their respective territories.

3. The Parties shall ensure that SPS measures are not used so as to create unjustified barriers to trade.

4. The Parties shall ensure that procedures established under this Chapter are undertaken and completed without undue delay and that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party.

ARTICLE 5.4

Definitions

1. For the purposes of this Chapter, the following definitions apply:

(a) the definitions in Annex A to the SPS Agreement;

(b) the relevant definitions adopted under the auspices of the Codex Alimentarius Commission;

(c) the relevant definitions adopted under the auspices of the World Organisation for Animal Health (hereinafter referred to as "WOAH");

(d) the relevant definitions adopted under the auspices of the International Plant Protection Convention (hereinafter referred to as "IPPC");

(e) "competent authority" means an authority whose roles and functions are set out in Annex 5-A (Competent authorities) to this Agreement; and

(f) "emergency measure" means an SPS measure that is applied by a Party to products of the other Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure.

2. In the event of any inconsistency between the definitions agreed under this Chapter and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

## ARTICLE 5.5

### Competent authorities and contact points

1. Upon entry into force of this Agreement, the Parties shall provide each other a list of their respective competent authorities and contact points for communication on all matters arising under this Chapter. The notification shall include the respective role, responsibilities and contact information of those authorities and contact points.

2. The Parties shall inform each other, through their respective contact points, of any significant changes in the structure, organisation and division of competence of their competent authorities and ensure that the information on the contact points is kept up to date.

ARTICLE 5.6

Import conditions and process facilitation

1. Without prejudice to the rights and obligations of each Party under this Chapter, the import conditions[1] of the importing Party shall apply to the entire territory of the exporting Party.

2. Each Party shall:

(a) ensure that control, inspection and approval procedures are undertaken and completed without undue delay;

(b) promptly communicate to the other Party any changes to import conditions and procedures; and

[1] For greater certainty, the term "import conditions" means any SPS measure as set out in Annex A of the SPS Agreement that must be complied with for imports to achieve the appropriate level of protection of the importing Party. This does not preclude India from receiving and examining export requests from a Member State individually, in line with its laws and regulations and its obligations under international law.

(c) except in duly justified circumstances related to its level of protection, provide a transition period between the publication of the changes to its control, inspection and approval procedures and their application.

3. If the importing Party requires a product to be approved for import, it shall, on request of the exporting Party and without undue delay:

(a) inform the exporting Party of the anticipated processing period of the procedure;

(b) undertake and complete the examination of the documentation received from the exporting Party as part of its request and inform the exporting Party in a precise and complete manner of any deficiencies; and

(c) inform the exporting Party of the status of the assessment of the request in a precise and complete manner, with any delay being explained, so that corrective action may be taken by the exporting Party, if necessary.

4. The importing Party shall provide the exporting Party with the risk assessment it conducted as part of the approval procedure within a reasonable period of time.

5. Upon request, the importing Party shall, without undue delay, provide the exporting Party with an explanation of the relationship between the SPS measure and international standards, guidelines and recommendations and, if the SPS measure is not based on an international standard, provide the exporting Party with the information, including scientific evidence, on which the SPS measure is based and an explanation of the reasons for such measure.

6. Information requirements are limited to what is necessary for appropriate control, inspection and approval procedures.

7. In case of an export request from a Member State for a product which has previously been approved for import from another Member State, India shall expedite the assessment of such request.

8. With respect to plants and plant products, each Party shall limit its import requirements to measures ensuring the absence of regulated pests[1] in accordance with the applicable standards agreed under the IPPC.

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[1] For India, "regulated pest" means "quarantine pest".

## ARTICLE 5.7

## Certification

1. Where a Party requires an official certificate for the importation of a product, such certificate shall be based on the principles laid down in the international standards of the Codex Alimentarius, the IPPC and WOAH.

2. The importing Party shall not put in place any additional administrative measure that duplicates the requirements of the official certificate.

3. Each Party shall ensure that its certification, including any attestations, are prepared in a manner that avoids imposing an unnecessary burden on trade.

4. Importing Party shall promptly provide to the other Party, on request, information on the certificates required for a specific product.

5. The Parties shall encourage the implementation of electronic certification and other technologies to facilitate trade.

6. Each Party shall accept either paper certificates or electronic certificates to the extent that they offer equivalent certification and relevant security and guarantees.

ARTICLE 5.8

Audits

1. For the purposes of attaining and maintaining the confidence in the exporting Party's compliance with the SPS requirements of the importing Party, the relevant competent authority of the importing Party may conduct an audit of all or part of the control system of the competent authority of the other Party, taking into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations of the Codex Alimentarius, the IPPC and WOAH.

2. The audit referred to in paragraph 1 shall:

(a) focus on the control system of the competent authority of the exporting Party rather than on specific establishments of the exporting Party;

(b) evaluate the effectiveness of the control system of the competent authority of the exporting Party; and

(c) follow a systems-based approach which relies on the examination of a sample of system procedures, relevant documents or records and, if required, on-site inspections of establishments of the exporting Party.

3. The importing Party shall determine the nature and frequency of audits and decide to carry out an audit taking into account the inherent risks of the product concerned, the track record of past import checks and other available information such as audits and inspections undertaken by the competent authority of the exporting Party.

4. The importing Party shall send a pre-audit questionnaire to the exporting Party prior to notifying the decision to conduct an audit. The exporting Party shall be granted at least six months to respond to that pre-audit questionnaire.

5. Once the importing Party decides to carry out an audit of the exporting Party, it shall notify its decision, including the scope of audit and its schedule, to the exporting Party at least 60 days before the planned starting date of the audit, unless the Parties agree otherwise or in case of emergency. Any modification of the starting date or the schedule of the audit shall be agreed by the Parties.

6. The importing Party shall bear its own costs associated with audits.

7. The exporting Party shall give reasonable access to the importing Party for conducting an audit.

8. The importing Party shall set forth its findings, preliminary conclusions and, if applicable, its recommendations from the audit in writing in a draft audit report.

9. The importing Party shall provide the draft audit report to the exporting Party within 30 working days after the date of conclusion of the audit, unless otherwise agreed between the Parties. However, where a significant public, animal or plant health risk has been identified during the audit, the importing Party shall inform the exporting Party as quickly as possible and in any case within 10 working days after the date of conclusion of the audit.

10. The exporting Party shall inform the importing Party of any comments on the draft audit report and, if required, of any corrective action planned or taken based on the findings, conclusions and, if applicable, the recommendations in the draft audit report, within 35 working days after the date of receipt of the draft audit report, unless otherwise agreed between the Parties. However, where a significant public, animal or plant health risk has been identified during the audit, the exporting Party shall inform the importing Party as quickly as possible and in any case within 10 working days after the date of receipt of the draft audit report.

11. The importing Party shall provide the final audit report to the exporting Party within 30 working days after the date of receipt of the exporting Party's comments on the draft audit report and, if required, information on corrective actions planned or taken.

12. Any measures taken by the importing Party on the basis of audits shall be proportionate to the risks identified while taking into account any additional information that may be provided by the exporting Party and shall not be more trade restrictive than necessary to achieve the importing Party's appropriate level of protection. Nothing in this paragraph prevents a Party from taking an emergency measure consistent with Article 5.13 (Emergency measures).

13. Each Party shall ensure, in accordance with their respective laws and regulations, that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

## ARTICLE 5.9

### Procedure for registration or publication of lists of establishments

1. For the purposes of this Article, the exporting Party shall ensure that the establishments and products it approved for export meet the applicable SPS requirements of the importing Party.

2. If the importing Party maintains a list of establishments of the exporting Party for import of a specific product, the procedure for registration or publication of lists shall be based on an evaluation of the official control system of the relevant competent authority of the exporting Party, and the following shall apply:

(a) the competent authority of the exporting Party shall approve the establishment of the exporting Party which intends to export the specific product to the importing Party;

(b) the exporting Party shall share with the importing Party the list of establishments approved pursuant to point (a);

(c) on receipt of the list of approved establishments from the exporting Party, the importing Party shall register or publish on its official website, the list of these establishments; and

(d) once an establishment of the exporting Party has been registered or published pursuant to point (c), the importing Party shall allow imports of the specific product without prior inspection of that establishment, within 40 days after the date of receipt of the list of the approved establishments pursuant to point (c).

3. The importing Party shall make publicly available such list of establishments.

4. In the event of serious or repeated non-compliance of consignments from an approved establishment, the importing Party may conduct intensified official controls on the consignments of such establishment and shall promptly notify the exporting Party of the specific instances of non-compliance or identified health risks, and request the exporting Party to conduct the necessary investigations.

5. The exporting Party shall send to the importing Party a report on the outcome of the investigation and share, without delay, the action plan including the proposed corrective measures to effectively remedy the identified issues. The corrective measures may include the temporary withdrawal of the relevant establishment from the list of approved establishments by the competent authority of the exporting Party.

6. The exporting Party shall communicate to the importing Party the corrective measures mentioned in paragraph 5 it has taken and the results of such action plan. Upon receipt of such communication, the importing Party shall promptly evaluate the corrective measures taken. If it concludes that the corrective measures taken effectively remedy the identified issues and that the results of its intensified official controls are satisfactory, it shall promptly terminate these controls for such establishment.

ARTICLE 5.10

Transparency and exchange of information

1. The Parties shall, through their respective contact points referred to in Article 5.5 (Competent authorities and contact points), ensure transparency as regards SPS measures, including any amendment or modification, applicable to trade, as set out in Article 7 and Annex B of the SPS Agreement, which apply *mutatis mutandis*.

2. A Party shall promptly inform the other Party of:

(a) any significant finding of epidemiological importance or change to a plant pest or animal disease status, such as the presence and evolution of a pest or disease relevant for trade between the Parties; or

(b) any significant food safety issue relevant for trade between the Parties;

3. On request of a Party, the other Party shall communicate:

(a) the import conditions that apply to the import of specific products without undue delay after the receipt of the request;

(b) the progress of the import approval procedure for specific products without undue delay after the receipt of the request; and

(c) any other information related to SPS measures under this Chapter that may affect trade between the Parties.

4. Each Party shall make publicly available up-to-date information on:

(a) all its sanitary and phytosanitary laws and regulations that are adopted; and

(b) the animal disease status or plant quarantine pest list in its territory.

5. With respect to plants and plant products, each Party shall make publicly available an updated list of regulated pests for which a phytosanitary concern exists, in accordance with the applicable standards agreed under the IPPC.

6. When the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules or when it has been made available on the official and publicly accessible websites of the Parties, the information exchange shall be considered to have taken place.

ARTICLE 5.11

Adaptation to regional conditions

1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, zoning and compartmentalisation as set out in Article 6 of the SPS Agreement and WOAH respectively, and that the adaptation of SPS measures to regional conditions is an important means of facilitating trade, while protecting human, animal or plant life or health. In developing SPS measures that are adapted to regional conditions, the Parties shall take into account the relevant decisions of the WTO SPS Committee, the official animal health status recognized by the WOAH, and international standards, guidelines and recommendations developed by the relevant international organisations.

2. On receiving a request from the exporting Party for determination of its regional conditions, the importing Party shall inform the exporting Party whether it has sufficient information it needs to start the assessment, while providing an opportunity to the exporting Party to provide required information, if necessary. The information shared by the exporting Party shall be in accordance with Article 6(3) of the SPS Agreement. Once the importing Party determines that the information provided is sufficient, it shall initiate an assessment without undue delay.

3. The importing Party shall assess the information received from the exporting Party within a reasonable period of time after the date of receipt of the information. Any audit the importing Party may request shall be carried out in accordance with Article 5.8 (Audits) and shall be initiated within 90 days after the date of receipt of the information, unless otherwise agreed between the Parties.

4. The importing Party shall base its own determination of the plant pest or animal disease status of the exporting Party on the evidence provided by the exporting Party in accordance with applicable international standards, guidelines and recommendations. The importing Party shall take into account any relevant information and previous experience with the authorities of the exporting Party.

5. If the importing Party decides not to recognise the regional conditions of the exporting Party, it shall provide the exporting Party with the rationale for its determination and, to the extent practicable, indicate the required conditions for which the process under this Article may be reinitiated within a reasonable period of time from the receipt of such information. Upon request, the importing Party shall hold consultations with the exporting Party within a reasonable period of time from the date of receipt of the request.

6. If there are circumstances that result in the importing Party modifying or revoking a decision recognising the regional conditions of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

## ARTICLE 5.12

### Technical consultations

1. If a Party has significant concerns regarding human, animal or plant life or health, with respect to an SPS measure proposed or implemented by the other Party, it may request technical consultations with the other Party, through the contact points referred to in Article 5.5 (Competent authorities and contact points).

2. The requested Party shall respond within 30 days after the date of delivery of the request referred to in paragraph 1.

3. During technical consultations, each Party shall make every effort to provide the necessary information to address these concerns, and to reach a mutually acceptable solution that effectively manages any SPS risk and avoids a disruption in trade.

4. Where the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent possible in order to avoid unnecessary duplication.

5. A Party shall seek to resolve any concerns with respect to SPS measures of the other Party referred to in paragraph 1 through technical consultations pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.

6. A Party may terminate technical consultations by notifying the other Party in writing at any time no less than 180 days after the date of receipt of the response by the requested Party referred to in paragraph 2, or any other time period as agreed by the Parties.

ARTICLE 5.13

Emergency measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, it shall:

(a) promptly notify the other Party of such measure; and

(b) allow the other Party to make comments in writing.

2. If a Party has a concern regarding an emergency measure adopted by the other Party, it may request technical consultations pursuant to Article 5.12 (Technical consultations) with the other Party. The Party that adopts the emergency measure shall take into consideration any information provided by the other Party during technical consultations.

3. If a consignment is being transported between the Parties at the time of the adoption of the emergency measure, the importing Party adopting the emergency measure shall consider any information that has been provided by the exporting Party, when it makes its decision with respect to that consignment. The importing Party shall consider the most suitable and proportionate solution to avoid unnecessary disruptions to trade.

4. If a Party adopts an emergency measure, it shall commence a science-based review of the measure within a reasonable period of time. The Party shall then review the need for the emergency measure as required, and if it remains in place provide, on request, the justification for maintaining such measure. If the exporting Party considers, on the basis of scientific evidence, that an emergency measure is being maintained by the importing Party without justification it may provide that evidence to the other Party and request the other Party to review the emergency measure or engage in technical consultations under Article 5.12 (Technical consultations).

5. Without prejudice to emergency measures, the importing Party shall not stop the importation of a good of the other Party solely for the reason that the importing Party is undertaking a review of an existing SPS measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

## ARTICLE 5.14

### Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with Article 4 of the SPS Agreement while taking into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations, in accordance with Annex A to the SPS Agreement, *mutatis mutandis*.

2. A Party shall, upon request of the other party, enter into bilateral consultations with the aim of achieving the recognition of an individual measure, group of measures, or measures on a systems-wide basis as equivalent.

3. A Party shall, within a reasonable period of time after receipt of the request from the other Party, initiate the consultation process of determination of equivalence and shall finalise such determination taking into account any knowledge and past experience it has in trading with the other Party.

4. The importing Party shall conclude its assessment within a reasonable period of time from the date of request and shall notify the determination of equivalence, including non-recognition of the SPS measure as equivalent, to the exporting Party, within a reasonable period of time of conclusion of the assessment. To this effect, the importing Party shall implement the determination of equivalence within 60 days from the conclusion of the assessment.

5. The consideration by the importing Party of a request from the exporting Party for recognition of the equivalence of its SPS measures with regard to a specific product or group of products shall not be in itself a reason to disrupt or suspend ongoing trade from the exporting Party of the specific product or group of products in question. When an equivalence determination is made, it shall be formally recorded and applied to the trade between the Parties.

6. If a Party proposes to modify, amend, repeal or remove an SPS measure which is the subject of an equivalence arrangement between the Parties, it shall notify the other Party and indicate its likely effect on the recognition of equivalence within 30 days from such modification, amendment, repeal or removal. Following such notification, the importing Party shall continue to apply its determination of equivalence unless its appropriate level of protection is not met.

7. Compliance of a product or a group of products with SPS measures of one Party that have been accepted as equivalent to SPS measures of the other Party shall not remove the need for that product or a group of products to comply with any other relevant mandatory requirements.

8. The final determination of equivalence, and any subsequent withdrawal or suspension of equivalence, remains with the importing Party, acting in accordance with its administrative and legislative framework, taking into account international standards, guidelines and recommendations.

## ARTICLE 5.15

### Committee on Sanitary and Phytosanitary Measures

1. The Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Committee") is established pursuant to Article 18.3 (Specialised committees).

2. In addition to the functions specified in Article 18.4 (Functions of the specialised committees), the SPS Committee may address any matter related to this Chapter, including facilitating communication and strengthening cooperation between the Parties, and shall have the following functions:

(a) providing a forum to exchange expertise and experiences on each Party's SPS measures;

(b) providing a forum for the identification, prioritisation, discussion, and resolution of SPS issues; and

(c) agreeing on a written record of the discussions between the Parties on their work and decisions made by it, within a reasonable period of time.

3. The SPS Committee shall report, as needed, on its activities to the Joint Committee.

4. The SPS Committee may recommend the Joint Committee to establish *ad hoc* working groups consisting of expert-level representatives of the competent authorities of the Parties which shall identify and address SPS issues arising from this Chapter.

ARTICLE 5.16

Import checks

1. The importing Party shall have the right to carry out import checks based on the SPS risks associated with imports. These checks shall be carried out without undue delay, with minimising trade disrupting effects and in a non-discriminatory manner. The Parties shall ensure that their control, inspection and approval procedures are conducted in accordance with Annex C to the SPS Agreement.

2. A Party shall make available to the other Party, to the extent possible, on request, information on the frequency of its import checks and the factors that it considers relevant for determining the SPS risks associated with imports.

3. In carrying out SPS import checks, where sampling takes place, the importing Party shall ensure that plants and plant products, animal products and other goods and their packaging are sampled in a representative manner.

4. If import checks reveal non-compliance with the relevant import conditions, the following shall apply:

(a) the action taken by the importing Party shall be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the importing Party's appropriate level of protection;

(b) the importing Party shall notify the importer or its authorised representative or the exporter's authorised representative located in the territory of the importing Party, of the non-compliance, including the reason for the non-compliance, and shall, subject to its laws and regulations, provide them with an opportunity for a review of the decision;

(c) during the review, the importing Party shall give the importer or its authorised representative or the exporter's authorised representative located in the territory of the importing Party, an opportunity to provide relevant information to assist it in taking a final decision, consider that information, and take the final decision within a reasonable period of time;

(d) the importing Party shall provide the importer or its authorised representative or the exporter's authorised representative, located in the territory of the importing Party, with the opportunity to seek a second expert opinion which may include secondary testing of consignments. The outcome of such second expert opinion including secondary testing shall be considered by the importing Party in taking a final decision on the acceptance or rejection of consignments, provided that this consideration shall not affect the obligation of competent authorities of the importing Party to take prompt action to eliminate or contain the risks to human, animal and plant life or health;

(e) unless there is an identified risk, the importing Party shall, in accordance with its administrative framework and law, provide the opportunity for the operator or its authorized representative to take back the consignment, where reasonably practicable; and

(f) nothing in this Article prevents an importing Party from disposing of a consignment which is found to present risks to human, animal or plant life or health, that can, if urgent action is not taken, cause damage to human, animal or plant life or health in the importing Party's territory.

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

ARTICLE 6.1

Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade.

ARTICLE 6.2

Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 to the TBT Agreement, at the central level of government, which may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with this Chapter by governmental bodies, at the level directly below that of central government within its territory, which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

3. This Chapter does not apply to:

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

(b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement that fall within the scope of Chapter 5 (Sanitary and phytosanitary measures).

ARTICLE 6.3

Relationship with the TBT Agreement

1. Each Party affirms its rights and obligations under the TBT Agreement which is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Terms referred to in this Chapter have the same meaning as they have in the TBT Agreement

ARTICLE 6.4

Technical regulations

1. Each Party shall endeavour to consider the feasible and appropriate alternatives to the proposed technical regulations that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement, and may conduct an assessment, in accordance with its respective laws and regulations, of the impact of the proposed technical regulations.

2. Each Party shall use relevant international standards, or their relevant parts, as a basis for its technical regulations except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. If a Party does not use international standards, or their relevant parts, as a basis for its technical regulations, that Party shall, on request of the other Party, share the reasons why it considers such standards to be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

3. International standards developed by the International Organization for Standardization ("ISO"), the International Electrotechnical Commission ("IEC"), the International Telecommunication Union ("ITU") and the Codex Alimentarius Commission shall be the relevant international standards within the meaning of Articles 2 and 5 of, and Annex 3 to, the TBT Agreement.

4. A standard developed by other international organisations may also be considered a relevant international standard within the meaning of Articles 2 and 5 of, and Annex 3 to, the TBT Agreement, provided that:

(a) it has been developed by a standardising body which seeks to establish consensus either:

  (i) among national delegations of the participating WTO Members representing all the national standardising bodies in their territory that have adopted, or expect to adopt, standards on the subject matter to which the international standardisation activity relates; or

  (ii) among relevant governmental bodies of participating WTO Members; and

(b) it has been developed in accordance with the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations in relation to Articles 2 and 5 of, and Annex 3 to, the TBT Agreement.

5. Each Party shall endeavour to review its technical regulations to take into account any new development in the relevant international standards or any change in the circumstances that has given rise to divergences from any relevant international standard.

6. In accordance with its respective laws and regulations and without prejudice to Chapter 14 (Good regulatory practices and regulatory cooperation), for the development of a major technical regulation which may have a significant effect on trade, each Party shall endeavour to provide a reasonable opportunity to persons of the Parties to submit input through a public consultation process. Each Party shall allow persons of the other Party to participate in such consultations which are available to the general public, on terms that are no less favourable than those accorded to its own persons.

## ARTICLE 6.5

## Standards

1. Each Party shall encourage the standardising bodies established within its territory and, as applicable, the regional standardising bodies of which a Party or the standardising bodies established in its territory are members, to:

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

(b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for example, because of an insufficient level of protection, fundamental climatic or geographical factors or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardising bodies;

(d) review national standards and, as applicable, standards developed by regional standardising bodies that are not based on relevant international standards, with a view to minimising the divergence of those standards from relevant international standards;

(e) cooperate with the standardising bodies of the other Party in international standardisation activities of mutual interest, including through cooperation in the relevant international standardising bodies or at regional level; and

(f) foster bilateral cooperation with the standardising bodies of the other Party.

2. The Parties shall exchange available information on their respective use of standards in support of technical regulations and their respective standard-setting procedures.

ARTICLE 6.6

Conformity assessment

1. The provisions set out in Article 6.4 (Technical regulations) with respect to the preparation, adoption and application of technical regulations also apply to conformity assessment procedures, *mutatis mutandis*.

2. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall consider:

(a) selecting appropriate conformity assessment procedures that take into account the risks of non-conformity;

(b) as appropriate, the use of a supplier's declaration of conformity as proof of compliance with technical regulations; and

(c) on request of the other Party, providing available information on the criteria used to select the conformity assessment procedures for specific products.

3. Where a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental body as referred to in paragraph 4, it shall:

(a) use accreditation, as appropriate, as a means to qualify conformity assessment bodies;

(b) use relevant international standards, guides or recommendations issued by international standardising bodies, as applicable to accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation ("ILAC") and the International Accreditation Forum ("IAF");

(c) encourage accreditation bodies and conformity assessment bodies located within its territory to join any relevant functioning international agreements or arrangements for the harmonisation of, or facilitation of acceptance of, conformity assessment results;

(d) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general, and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies; and

(e) make publicly available online, preferably on a single website, a list of the bodies that it has designated to perform such conformity assessment and the information on the scope of designation of each of those bodies.

4. If a Party requires that conformity assessment in relation to specific products be performed by its specified government authorities, that Party shall:

(a) ensure that conformity assessment fees are equitable in relation to the fees charged for conformity assessment of like products of national origin or originating in third countries, taking into account communication, transportation and other costs arising from differences between the location of the facilities of the applicant and the conformity assessment body; and

(b) make the conformity assessment fees publicly available online.

ARTICLE 6.7

Transparency

1. Except where urgent problems of safety, health, environment or national security arise or threaten to arise, each Party shall allow the other Party to provide written comments on notified proposed technical regulations and conformity assessment procedures within 60 days after the date of the transmission of the notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend the comment period.

2. Each Party shall provide the electronic version of the full notified text together with the notification. If the notified text is not in one of the official WTO languages, the notifying Party shall provide a translation or a detailed and comprehensive description of the content of the measure in the WTO notification format.

3. If a Party receives written comments on its notified proposed technical regulation or conformity assessment procedure from the other Party, it shall take them into account, and shall endeavour to reply in writing to the comments no later than the date of publication of the adopted technical regulation or conformity assessment procedure.

4. On request of the other Party, a Party shall provide information regarding the objectives of, and rationale and legal basis for, any technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

5. Each Party shall ensure that the technical regulations and conformity assessment procedures that it has adopted are published on a freely accessible website.

6. Each Party shall endeavour to provide information on the adoption and the entry into force of technical regulations or conformity assessment procedures and the adopted final texts through an addendum to the original notification to the WTO.

7. Each Party shall normally allow a period of not less than six months between the publication of technical regulations and their entry into force, in order to allow time for the economic operators of the other Party to adapt, except when allowing such a period would make it ineffective to fulfil the legitimate objectives pursued.

8. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period set out in paragraph 1, to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would make it ineffective to fulfil the legitimate objectives pursued.

9. If standards are rendered mandatory in a draft technical regulation or conformity assessment procedure, through incorporation or reference, the transparency obligations set out in this Article and in Articles 2 or 5 of the TBT Agreement shall apply.

10. If a Party detains at the point of entry an imported consignment, due to non-compliance with a technical regulation or a conformity assessment procedure, it shall, in accordance with its laws and regulations, notify the importer or its representative, as soon as possible, of the reasons for the detention. If a Party does not fulfil such obligation to notify, it shall provide reasons to the other Party.

## ARTICLE 6.8

### Marking and labelling

1. The technical regulations of a Party may include or exclusively address mandatory marking or labelling requirements. In such cases, the principles of Article 2.2 of the TBT Agreement apply to these technical regulations.

2. Unless it is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement, if a Party requires mandatory marking or labelling of products, it shall:

(a) only require information which the Party determines to be relevant for consumers or users of the product pursuant to its laws and regulations, or information which indicates that the product conforms to the mandatory technical requirements;

(b) ensure that no prior approval, registration or certification of the labels or markings of products is required as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements;

(c) if the Party requires the use of a unique identification number by economic operators, issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) unless the information listed in points (i), (ii) or (iii) would be misleading, contradictory or confusing in relation to the information required by the importing Party, permit:

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

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

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

(e) accept that labelling, including supplementary labelling or corrections to labelling, takes place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless the labelling at the manufacturer's premises is required under the Party's laws or regulations to fulfil the legitimate objectives set out in Article 2.2 of the TBT Agreement; and

(f) endeavour to accept the use of non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring labels or marking to be physically attached to the product.

ARTICLE 6.9

Market surveillance[1]

1. Each Party shall ensure:

(a) the impartial and independent conduct of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest. This shall not prevent a Party from entrusting in a single entity both market surveillance functions and conformity assessment functions;

(b) the absence of any conflict of interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators; and

(c) the access by the market surveillance authorities to the relevant documents, technical specifications, data or information on compliance of the economic operators in its territory.

2. The Parties recognise the importance of cooperation on market surveillance of products for the facilitation of trade and for the protection of end users, including consumers, and the importance of building mutual trust based on timely shared information.

[1] "Market surveillance" means activities conducted and measures taken by public authorities, including those taken in cooperation with economic operators, on the basis of procedures of a Party, to enable that Party to monitor or address compliance or safety of products with the requirements set out in its laws and regulations.

3. The Parties may cooperate and exchange information, including with respect to the following:

(a) market surveillance activities and measures;

(b) market surveillance-related enforcement activities and measures;

(c) risk assessment methods and product testing;

(d) coordinated product recalls or other similar actions;

(e) scientific, technical and regulatory aspects, aiming to improve market surveillance;

(f) emerging issues of significant health and safety relevance; and

(g) standardisation-related activities.

4. Each Party may provide the other Party with relevant information on the safety of specific products[1] and on the preventive, restrictive and corrective measures taken with respect to such products. The information exchange may take the form of:

(a) non-systematic exchange, in duly justified and specific cases, excluding personal data; or

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[1] In the case of the European Union, the information will come from the Safety Gate system, or its successor.

(b) systematic exchange, based on an arrangement established in Annex 6-A (Arrangement referred to in Article 6.9(4) (Market surveillance) for the systematic exchange of information in relation to the safety of products and related preventive, restrictive and corrective measures).

5. The Parties may establish an arrangement in Annex 6-B (Arrangement referred to in Article 6.9(5) (Market surveillance) for the regular exchange of information regarding measures taken on non-compliant products, other than those covered by Article 6.9(4) (Market surveillance)) on the regular exchange of information, including by electronic means, on measures taken on non-compliant products, other than those covered by paragraph 4 of this Article.

6. Each Party shall use the information obtained pursuant to paragraphs 3, 4 and 5 of this Article for the sole purpose of the protection of consumers, health, safety or the environment.

7. Each Party shall treat the information obtained pursuant to paragraphs 3, 4 and 5 of this Article as confidential.

8. The arrangements referred to in paragraphs 4 and 5 of this Article shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

9. The Joint Committee shall have the power to adopt decisions to determine or amend arrangements set out in Annex 6-A (Arrangement referred to in Article 6.9(4) (Market surveillance) for the systematic exchange of information in relation to the safety of products and related preventive, restrictive and corrective measures) and Annex 6-B (Arrangement referred to in Article 6.9(5) (Market surveillance) for the regular exchange of information regarding measures taken on non-compliant products, other than those covered by Article 6.9(4) (Market surveillance)).

## ARTICLE 6.10

### Technical discussions

1. A Party may request technical discussions with the other Party regarding any matter arising under this Chapter by delivering a written request to the relevant contact point of the other Party designated pursuant to Article 6.14 (Contact points). The Parties shall make every attempt to arrive at a mutual understanding of the matter.

2. When such request refers to a draft or notified technical regulation or conformity assessment procedure of the other Party that might have a significant effect on trade between the Parties, the request shall identify:

(a) the measure at issue;

(b) the provisions of this Chapter to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

3. On request of either Party, the Parties shall discuss the concerns raised in the request referred to in paragraph 2, in person or by any other means, within 60 days after the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any discussion take place within a shorter timeframe. In such cases, the responding Party shall give positive consideration to such a request.

4. If the Parties have already had recourse to a bilateral forum, other than technical discussions under this Article, to address significant concerns with respect to any matter under this Chapter that is proposed or implemented by the other Party, they shall continue to make use of that forum to avoid unnecessary duplication of technical discussions. A Party may request technical discussions to address those concerns, in accordance with paragraph 1 of this Article, if it decides that those concerns cannot be addressed in that other forum. Once a request for technical discussions has been made for such concerns under this Article, the requesting Party shall not raise them in another forum as long as technical discussions are being held under this Article. If the requesting Party decides that such technical discussions are no longer fruitful, it may have recourse to another forum.

5. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter 17 (Dispute settlement).

ARTICLE 6.11

Committee on Technical Barriers to Trade

The Committee on Technical Barriers to Trade is established pursuant to Article 18.3(1) (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees), the Committee on Technical Barriers to Trade shall have the following functions:

(a) monitoring and reviewing any issue related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures, and promptly addressing any issue that the other Party raises related to these matters;

(b) facilitating cooperation between the Parties, as appropriate, with respect to any matter that falls within the scope of this Chapter;

(c) facilitating technical discussions under Article 6.10 (Technical discussions);

(d) establishing a cooperative framework grounded in transparency to foster mutual trust in the quality and integrity of each other's regulatory systems; and

(e) reducing the compliance burden on economic operators of the other Party while ensuring compliance with regulatory requirements and maintaining oversight of product safety and quality.

ARTICLE 6.12

Working Group on Conformity Assessment

1. The Parties hereby establish a Working Group on Conformity Assessment under the auspices of the Committee on Technical Barriers to Trade to consider and address matters arising from the application of each Party's conformity assessment procedures to comply with the technical regulations, including quality control orders and relevant European Union regulations, that may affect trade between the Parties.

2. The Working Group on Conformity Assessment shall, when appropriate, conduct the preparatory technical work for the adoption by the Committee on Technical Barriers to Trade of recommendations aimed at enhancing transparency, promoting mutual understanding, and reducing unnecessary compliance burdens on the economic operators of the Parties.

ARTICLE 6.13

Cooperation

1. The Parties shall encourage cooperation between their respective organisations responsible for standardisation and accreditation, with a view to facilitating trade.

2. Each Party, on request of the other Party, shall consider proposals for cooperation on matters of mutual interest on standards, technical regulations and conformity assessment procedures, including any sector specific initiatives.

3. Such cooperation, which shall be conducted on mutually determined terms and conditions, may include:

(a) advice or, whenever possible, technical assistance and capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) cooperation between conformity assessment bodies, both governmental and non-governmental, on matters of mutual interest;

(c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;

(d) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures; and

(e) strengthening communication and coordination in the WTO Committee on Technical Barriers to Trade and other relevant international or regional fora.

ARTICLE 6.14

Contact points

1. Upon the entry into force of this Agreement, each Party shall designate contact points responsible for coordinating the implementation of this Chapter and shall notify the other Party of the same. The notification shall include the respective roles, responsibilities, and contact information of the contact points, including telephone numbers, email addresses and any other relevant details. The Parties shall promptly notify each other of any change to those contact details.

2. The contact point of a Party shall provide any information or explanation requested by the contact point of the other Party in relation to the implementation of this Chapter within a reasonable period of time.

# CHAPTER 7

# TRADE REMEDIES

## SECTION A

## ANTI-DUMPING AND COUNTERVAILING MEASURES

### ARTICLE 7.1

### General provisions

1. Each Party retains its rights and obligations arising from the Anti-dumping Agreement and from the SCM Agreement.

2. For the purposes of this Section, origin shall be determined in accordance with the applicable non-preferential rules of origin of each Party.

## ARTICLE 7.2

### Transparency

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping or a countervailing investigation with respect to imports from the other Party and before proceeding to initiate such investigation, the Party shall provide written notification to the other Party.

2. Before initiating a countervailing investigation, a Party shall afford the other Party an opportunity to consult with its investigating authority with the aim of seeking a mutually agreed solution. The consultations shall be held after providing sufficient time, but no less than seven days after the date of sending of the invitation.

3. Pursuant to Article 6.2 of the Anti-dumping Agreement and Article 12.2 of the SCM Agreement, on request of an interested party, a Party shall grant such interested party the possibility to be heard in order to express their views during an anti-dumping or a countervailing investigation, provided that the granting of such request does not prevent the investigation from proceeding expeditiously.

4. Before a final finding is issued, the investigating authority shall inform the parties participating in the investigation of the essential facts that form the basis for the decision. Such disclosure shall be made in writing and should take place in sufficient time for the parties to defend their interests. The preliminary finding, if issued, shall contain sufficient detailed information specifying the reasons leading to the decision.

## ARTICLE 7.3

### Consideration of public interest

Anti-dumping or countervailing measures may not be applied by a Party if, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Such consideration of public interest shall be in accordance with the laws and regulations of a Party. The public interest assessment may take into account the situation of various interested parties, including the domestic industry, importers and their representative associations, representative users and representative consumer organizations, to the extent they have provided relevant information to the investigating authorities.

## ARTICLE 7.4

### Lesser duty rule

If a Party takes a decision to impose an anti-dumping duty or a countervailing duty, that Party shall, in accordance with its law, apply a duty less than the margin of dumping or a duty less than the subsidy margin, as the case maybe, if such lesser duty would be adequate to remove the injury to the domestic industry.

## SECTION B

## GLOBAL SAFEGUARD MEASURES

## ARTICLE 7.5

### General provisions

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

ARTICLE 7.6

Transparency

1. Notwithstanding Article 7.5 (General provisions), on request of the other Party and provided that such Party has a substantial interest, the Party initiating a safeguard investigation or intending to apply global safeguard measures shall provide as soon as possible a written notification of all pertinent information regarding the initiation of a safeguard investigation or the application of global safeguard measures including on the provisional findings, if relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.

2. To the extent permitted by the Safeguards Agreement, when applying global safeguard measures, the Parties shall endeavour to apply them in a way that least affects trade between the Parties.

3. For the purposes of paragraph 2 of this Article, if a Party intending to apply such global safeguard measures considers that the legal requirements are met for the application of definitive global safeguard measures, that Party shall notify the other Party having a substantial interest and, upon request, give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 12 days of the notification, the importing Party may apply the appropriate global safeguard measures to remedy the problem.

4. For the purposes of this Article, a Party is considered to have a substantial interest when it is among the five largest suppliers of the imported good during the most recent three-year period, measured in terms of either absolute volume or value.

## SECTION C

## BILATERAL SAFEGUARD MEASURES

### ARTICLE 7.7

### Definitions

For the purposes of this Section:

(a) "domestic industry" means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

(b) "serious injury" means a significant overall impairment in the position of a domestic industry,

(c) "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; and

(d) "transition period" means 22 years from the date of entry into force of this Agreement.

ARTICLE 7.8

Application of a bilateral safeguard measure

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that good from that Party cause or threaten to cause a serious injury to domestic producers of like or directly competitive goods, the other Party may apply appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Section.

2. If the conditions set out in paragraph 1 are met, the bilateral safeguard measures of the importing Party may only consist of one of the following:

(a) the suspension of the further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or

(b) the increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

(i) the most-favoured nation applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is applied; or

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

## ARTICLE 7.9

### Conditions and limitations

1. A bilateral safeguard measure shall not be applied or maintained:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Article 7.8(1) (Application of a bilateral safeguard measure) and to facilitate adjustment;

(b) for a period exceeding two years, which may be extended by another two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Section, that the measure continues to be necessary to prevent or remedy the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) and Article 7.13 (Outermost regions of the European Union), and to facilitate adjustment, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or

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

2. Neither Party shall apply, with respect to the same product and during the same period:

(a) a bilateral safeguard measure provided for in this Agreement;

(b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement; and

(c) a special safeguard under Article 5 of the Agreement on Agriculture.

3. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good, in accordance with the Party's schedule in Annex 2-A (Schedules of tariff commitments).

ARTICLE 7.10

Provisional bilateral safeguard measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article 7.20(1) (Notifications and publications of definitive measures), following a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Article 7.8(1) (Application of a bilateral safeguard measure).

2. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the relevant procedural rules laid down in Article 7.9 (Conditions and limitations). The Party shall promptly refund any tariff increases if the investigation described in Article 7.15 (Initiation of a bilateral safeguard investigation) does not result in a finding that the requirements of Article 7.8 (Application of a bilateral safeguard measure) are met. The duration of any provisional measure shall be counted as part of the period described in point (b) of Article 7.9(1) (Conditions and limitations). The importing Party shall inform the other Party upon applying such provisional measures.

ARTICLE 7.11

Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the other Party whose goods are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects. The Party applying the bilateral safeguard measure shall provide an opportunity for those consultations no later than 30 days after the date of application of definitive bilateral safeguard measure.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure. This suspension shall apply only for the minimum period necessary to achieve the substantially equivalent effects.

3. The right of suspension pursuant to paragraph 2 shall not be exercised for:

(a) the first two years during which the bilateral safeguard measure is in effect; and

(b) the first three years during which the measure is in effect, if it has been extended beyond two years.

## ARTICLE 7.12

### Time lapse between two bilateral safeguard measures

A Party shall not apply a bilateral safeguard measure to a good originating in the other Party that has already been subject to such a measure for a period of time equal to half of the duration of the previous bilateral safeguard measure.

## ARTICLE 7.13

### Outermost regions of the European Union

1. If any good originating in India is being imported directly into the territory of one or several outermost regions[1] of the European Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost regions concerned, the European Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the outermost regions concerned.

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[1] On the date of entry into force of this Agreement, the outermost regions of the European Union are: Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article shall also apply to a country or an overseas territory that changes its status to an outermost region by a decision of the European Council in accordance with the procedure set out in Article 355(6) of the Treaty on the Functioning of the European Union from the date of adoption of that decision. In the event that an outermost region of the European Union changes its status as such by the same procedure, this Article shall cease to be applicable from the European Council's decision accordingly. The European Union shall notify India of any change in the territories considered as outermost regions of the European Union.

2. Without prejudice to paragraph 1, other provisions of this Section are also applicable to any bilateral safeguard measure applied under this Article. Any reference to "serious injury" in those other provisions shall be understood as "serious deterioration" when applied in relation to outermost regions of the European Union.

3. For the purposes of paragraphs 1 and 2, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods. The determination of deterioration shall be based on objective factors, including the following elements:

(a) the increase in the volume of imports in absolute or relative terms to domestic production and to imports from other sources; and

(b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.

ARTICLE 7.14

Administration of bilateral safeguard investigations

1. For the application of bilateral safeguard measures, the competent investigating authority of each Party shall comply with this Section and, in cases not covered by this Section, the competent investigating authority of a Party shall apply the rules established under the law of that Party.

2. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all bilateral safeguard investigations under this Section.

ARTICLE 7.15

Initiation of a bilateral safeguard investigation

1. A bilateral safeguard investigation may be initiated by the competent investigating authority of a Party pursuant to the law of that Party.

2. Once the investigation has been initiated, the written application shall be made available for public inspections, except for the confidential information contained therein.

3. Upon initiation of a bilateral safeguard investigation, the competent investigating authority shall publish a notice of initiation of the investigation in the official journal of the Party. The notice shall identify:

(a) the applicant that filed the written application, if applicable;

(b) the imported good that is the subject of the investigation and its indicative subheading and the tariff item number under which it is classified;

(c) the period within which interested parties may apply to participate in the investigation; and

(d) the name and address of the office to be contacted for more information.

ARTICLE 7.16

Investigation

1. A Party may apply a bilateral safeguard measure only following an investigation by the competent investigating authority of that Party in accordance with this Section. This investigation shall include reasonable public notice to all interested parties, the opportunity to be heard and any other appropriate means by which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties.

2. Each Party shall ensure that its competent investigating authority completes any such investigation within 12 months of the date of its initiation.

## ARTICLE 7.17

### Evidence of injury and causal link

1. In conducting its bilateral safeguard investigation, the competent investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the good concerned in absolute terms or relative to domestic production, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

2. The determination of whether increased imports have caused or are threatening to cause the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the good concerned and the situations described in Article 7.8(1) (Application of a bilateral safeguard measure). Where factors other than increased imports are, at the same time, causing the situations described in Article 7.8(1) (Application of a bilateral safeguard measure), such serious injury or threat thereof shall not be attributed to increased imports.

ARTICLE 7.18

Hearings

In the course of each bilateral safeguard investigation, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties to present evidence and to be heard; or

(b) provide an opportunity to all interested parties to be heard if they have made a written application within the period laid down in the notice of initiation.

ARTICLE 7.19

Confidential information

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as confidential by the competent investigating authority of a Party. Such information shall not be disclosed without permission of the party submitting it.

2. Interested parties providing confidential information are requested to furnish non-confidential summaries thereof or, if those parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authority may disregard such information, unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

## ARTICLE 7.20

### Notifications and publications of definitive measures

1. If the competent investigating authority of a Party takes the view that one of the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) exists, that Party shall, as soon as possible, inform the other Party and provide all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the good involved and the proposed measures, and where applicable, the proposed date of application and expected duration.

2. Upon request, a Party proposing to apply a bilateral safeguard measure shall provide adequate opportunity for consultations with the other Party prior to the conclusion of the investigation.

3. The competent investigating authority shall also publish its determinations and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the Party, including the description of the imported good and the situation, which has given rise to the application of measures pursuant to Article 7.8 (Application of a bilateral safeguard measure), the causal link between such situation and the increased imports, and the form, level and duration of the measures.

4. The competent investigating authority shall not disclose any information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the investigation.

## SECTION D

## DISPUTE SETTLEMENT

### ARTICLE 7.21

### Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under Section A (Anti-dumping and countervailing measures) and Section B (Global safeguard measures) of this Chapter.

# CHAPTER 8

# TRADE IN SERVICES

### ARTICLE 8.1

### Scope

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

2. Consistent with the provisions of this Chapter, each Party retains its right to regulate within its respective territory to achieve its legitimate policy objectives.

3. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, or to measures regarding nationality or citizenship, residence, or employment on a permanent basis.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons 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 those measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter. The sole fact that a Party requires natural persons of the other Party to obtain a visa shall not be considered as nullifying or impairing the benefits accruing to the other Party under this Chapter.

5. For the purposes of this Chapter, "measures by a Party" means measures taken by:

(a) central, regional or local governments and authorities of that Party; and

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

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

6. This Chapter does not apply to measures affecting:

(a) government procurement 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;

(b) subsidies or grants, including government-supported loans, guarantees and insurance, provided by a Party or 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 services, service consumers, or service suppliers, except as provided in Article 8.20 (Subsidies);

(c) audio-visual services;

(d) cabotage in maritime transport services[1];

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[1] For the European Union, cabotage in maritime transport services covers, without prejudice to the scope of activities that may be considered cabotage under the law of Member States, transportation of passengers or goods between a port or point located in a Member State and another port or point located in that same Member State, including on its continental shelf, as provided for in the UNCLOS, and traffic originating and terminating in the same port or point located in a Member State. For India, cabotage in maritime transport services means transportation of passengers or goods between any port or place located in India and any other port or place located in India and transportation of passengers or goods originating or terminating in the same port or place located in India, including transportation of passengers or goods between a port or a place located in India and another port, place, installation and structures situated in the Exclusive Economic Zone ("EEZ") of India or on the continental shelf of India.

(e) inland waterways transport; and

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

(i) aircraft repair and maintenance services;

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

(iii) ground handling services; and

(iv) computer reservation system services.

7. Annex 8-A (Entry and temporary stay of natural persons), Annex 8-B (Professional services), Annex 8-C (Financial services), Annex 8-D (Telecommunication services) are integral parts of this Chapter and shall be read with the provisions of this Chapter.

ARTICLE 8.2

Definitions

For the purposes of this Chapter, the following definitions apply:

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

(b) "commercial presence" means any type of business or professional establishment within the territory of a Party for the purposes of supplying a service, 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;

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

(d) "ground handling services" means the supply at an airport of the following services, on a fee or contract basis: ramp handling, aircraft servicing, aircraft cleaning, loading or unloading[1], crew administration, air cargo and mail handling services, baggage handling, administrative support services such as supervision, ramp fuelling or defueling operations, liaison for fuelling and defueling, representational service, passenger handling, liaison and administration for catering services, flight operations and surface transport. Ground handling services do not include: security functions and self-handling, or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra airport transport systems;

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

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party[2]; or

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[1] For greater certainty, for India, "loading or unloading" in this definition includes "crew administration". For the European Union, "crew administration" is not included under "loading or unloading" and is mentioned separately within this definition.

[2] For the European Union, the concept of "substantive business operations" is understood as being equivalent to the concept of "effective and continuous link" with the economy of a Member State, as enshrined in Article 54 of the Treaty on the Functioning of the European Union. The concept of "effective and continuous link" with the economy of a Member State is equivalent to the concept of "substantive business operations" provided in paragraph 6 of Article V of GATS, in line with the notification by the European Union of the Treaty establishing the European Community to the WTO (WT/REG39/1). The Parties share the understanding that a shell company does not fall within the scope of this Chapter as it does not meet the requirements of having "substantive business operations" or having an "effective and continuous link" with the economy of a Member State.

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

(A) natural persons of that Party; or

(B) juridical persons of that Party identified under point (e)(i);

(f) a juridical person is:

(i) "owned" by persons of a Party if more than 50 % 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;

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

(h) "measures by a Party 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 a Party to be offered to the public generally; and

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

(i) for the European Union, a national of a Member State pursuant to its law[1]; and

(ii) for India, a natural person who resides in the territory of India or elsewhere and who under its law is a national;

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[1] Solely for the Republic of Latvia, the definition of natural person also includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

(k) "sector" of a service means:

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

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

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

(m) "services" includes any service in any sector 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 that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

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

(p) "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;

(q) "service supplier" means a person that supplies a service[1];

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

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

(i) from the territory of one Party into the territory of the other Party ("mode 1");

(ii) in the territory of one Party to the service consumer of the other Party ("mode 2");

(iii) by a service supplier of one Party, through commercial presence in the territory of the other Party ("mode 3"); or

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[1] 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 Agreement. 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.

(iv) by a service supplier of one Party, through the presence of natural persons of a Party in the territory of the other Party ("mode 4"); and

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

## ARTICLE 8.3

### Scheduling of commitments

1. Each Party shall undertake commitments under Article 8.4 (Market access), Article 8.5 (National treatment), Article 8.6 (Most-favoured-nation treatment), in accordance with Article 8.8 (Schedule of specific commitments) or Article 8.9 (Non-conforming measures).

2. Each Party may also undertake commitments under Article 8.7 (Additional commitments).

ARTICLE 8.4

Market access

1. With respect to market access through the modes of supply identified in point (s) of Article 8.2 (Definitions), each Party shall accord to 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 schedules.

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.8 (Schedule of specific commitments), or subject to its non-conforming measures, as provided in the Article 8.9 (Non-conforming measures), are defined as:

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

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

(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[1];

[1] This point does not cover measures by a Party which limit inputs for the supply of services.

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

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

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

3. If a Party undertakes a market access commitment to grant the treatment specified in paragraphs 1 and 2 in accordance with Article 8.8 (Schedule of specific commitments) or Article 8.9 (Non-conforming measures) in relation to the supply of a service through a mode of supply referred to in point (s) (i), (ii) or (iv) of Article 8.2 (Definitions), it shall not require a service supplier of the other Party to be resident in its territory or to establish or maintain a representative office, a branch or any form of juridical person in its territory as a condition for the supply of that service through the relevant mode of supply, unless otherwise specified in the Parties' respective schedules as referred to in Article 8.8 (Schedule of specific commitments) and Article 8.9 (Non-conforming measures).

ARTICLE 8.5

National treatment

1. A Party undertaking commitments in accordance with Article 8.8 (Schedule of specific commitments) shall accord, in the sectors inscribed in its schedule of specific commitments, and subject to any conditions and qualifications set out therein, 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.

2. A Party undertaking commitments in accordance with Article 8.9 (Non-conforming measures) 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, subject to its non-conforming measures as provided in Article 8.9 (Non-conforming measures).

3. Nothing in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services or service suppliers.

4. A Party may meet the requirement under paragraph 1 or 2 of this Article 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 the Party compared to like services or service suppliers of the other Party.

6. If a Party undertakes, in relation to the supply of a service through the mode of supply referred to in point (s)(iii) of Article 8.2 (Definitions), a national treatment commitment to grant the treatment specified in paragraph 1 of this Article in accordance with Article 8.8 (Schedule of specific commitments) or in paragraphs 1 and 2 of this Article in accordance with Article 8.9 (Non-conforming measures), that Party shall not require the appointment of individuals of any particular nationality as executives, managers or members of boards of directors as a condition for the supply of that service through commercial presence, unless otherwise specified in the Parties' respective schedules as referred to in Article 8.8 (Schedule of specific commitments) and Article 8.9 (Non-conforming measures).

ARTICLE 8.6

Most-favoured-nation treatment

1. A Party undertaking commitments in accordance with Article 8.8 (Schedule of specific commitments) shall accord, in respect of the sectors and subsectors set out in Appendix 8-H-1 (Most-favoured-nation treatment sectoral coverage of India) and subject to any terms, limitations, conditions and qualifications set out therein, 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 like services and service suppliers of a third country in the context of an economic integration agreement signed after the entry into force of this Agreement.

2. A Party undertaking commitments in accordance with Article 8.9 (Non-conforming measures) 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 like services and service suppliers of a third country, subject to its non-conforming measures as provided in Article 8.9 (Non-conforming measures).

3. Paragraphs 1 and 2 of this Article shall not be construed as obliging a Party to extend to services or service suppliers of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or

(b) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or commercial presence to carry out a service, or the recognition of prudential measures as referred to in paragraph 3 of the Annex on Financial Services to GATS.[1]

4. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 of this Article does not include dispute settlement procedures provided for in other international agreements.

5. For greater certainty, the existence of substantive provisions in economic integration agreements concluded by a Party with a third country does not in itself constitute the "treatment" referred to in paragraphs 1 and 2.

6. This Article shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

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[1] For greater certainty, point (b) is without prejudice to paragraph 2 of Article 8.13 (Recognition).

7. Each Party shall accord the treatment referred to in paragraphs 1 and 2 for a period of five years from the date of entry into force of this Agreement. The treatment referred to in paragraphs 1 and 2 shall cease to apply five years after the date of entry into force of this Agreement, unless otherwise mutually agreed in the review to be carried out in accordance with paragraph 8.

8. At the beginning of the fourth year following the entry into force of this Agreement, the Joint Committee shall:

(a) review the developments pertaining to the granting or maintenance of treatment relating to the entry and stay of students that are natural persons of India in the European Union, including their work rights, in the context of relevant European Union law and existing bilateral agreements with India, and the maintenance, conclusion and adoption of social security agreements or similar arrangements or agreements, in the context of the temporary movement of service suppliers; and

(b) subsequently, decide whether or not to continue according the treatment referred to in paragraphs 1 and 2 after five years from the date of entry into force of this Agreement.

9. The review referred to in paragraph 8 shall be concluded prior to the end of the fifth year following the date of entry into force of this Agreement.

10. If the Joint Committee decides, following the review referred to in paragraph 8, to continue according the treatment referred to in paragraphs 1 and 2, a Party may, at any stage after five years from the date of entry into force of such decision, request a further review by the Joint Committee, if that Party considers that subsequent developments pertaining to the elements that were subject to the review carried out under paragraph 8 adversely affect its interests. Pursuant to that request, the Joint Committee shall review whether or not to continue the treatment referred to in paragraphs 1 and 2.

11. If the Joint Committee decides, following the review referred to in paragraphs 8 or 9, not to continue according the treatment referred to in paragraphs 1 and 2, neither Party shall have the obligation to accord treatment. A decision not to continue according that treatment shall discontinue the accordance of the treatment referred to in paragraphs 1 and 2 and shall not affect any benefits or privileges accorded by either Party while the treatment referred to in paragraphs 1 and 2 applied.

ARTICLE 8.7

Additional commitments

1. The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.4 (Market access) or Article 8.5 (National treatment) or Article 8.6 (Most-favoured-nation treatment), including those regarding qualifications, standards or licensing matters.

2. A Party undertaking additional commitments shall inscribe such commitments in its schedules as referred to in Article 8.8 (Schedule of specific commitments) or Article 8.9 (Non-Conforming measures).

ARTICLE 8.8

Schedule of specific commitments

1. A Party undertaking commitments in accordance with this Article shall set out in its schedule the specific commitments it undertakes under Article 8.4 (Market access), Article 8.5 (National treatment) and Article 8.7 (Additional commitments). With respect to the sectors in which 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; and

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

2. Measures inconsistent with both Article 8.4 (Market access) and Article 8.5 (National treatment) shall be inscribed in the column relating to Article 8.4 (Market access). In this case, the inscription will be considered to provide a condition or qualification to Article 8.5 (National treatment) as well.

3. A Party undertaking commitments in accordance with this Article shall set out in its schedule of specific commitments, the sectors and subsectors on which it undertakes commitments under Article 8.6 (Most-favoured-nation treatment). With respect to such sectors and subsectors, the schedule shall specify the terms, limitations, conditions and qualifications on most-favoured-nation treatment.

4. For greater certainty, the schedule of specific commitments is contained in Annex 8-H (Schedule of specific commitments of India) and shall form an integral part of this Chapter.

ARTICLE 8.9

Non-conforming measures

1. For a Party undertaking commitments in accordance with this Article, Article 8.4 (Market access), Article 8.5 (National treatment) and Article 8.6 (Most-favoured-nation treatment) do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of:

  (i) the central government, as set out in Annex 8-E (Schedule of existing measures of the European Union);

  (ii) a regional government, as set out in Annex 8-E (Schedule of existing measures of the European Union); or

  (iii) a local government.

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification to any non-conforming measure referred to in points (a) and (b), to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with Article 8.4 (Market access), Article 8.5 (National treatment) and Article 8.6 (Most-favoured-nation treatment).

2. Article 8.4 (Market access), Article 8.5 (National treatment) and Article 8.6 (Most-favoured-nation treatment) do not apply to a measure by a Party which is consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex 8-F (Schedule of future measures of the European Union).

3. For greater certainty, schedules of non-conforming measures are contained in Annex 8-E (Schedule of existing measures of the European Union) and Annex 8-F (Schedule of future measures of the European Union), which shall form an integral part of this Chapter.

ARTICLE 8.10

Transparency of measures in the schedule of specific commitments

1. No later than six years from the date of entry into force of this Agreement, a Party shall set out in its schedule of specific commitments any existing measure maintained at the central government level and shall also provide an indicative list of existing measures maintained by regional government, if applicable, that apply to the modes of supply referred to in point (s) of Article 8.2 (Definitions) of the sectors where it has undertaken specific commitments in accordance with Article 8.8 (Schedule of specific commitments) if those measures form the basis for specific limitations, terms, qualifications or conditions that do not conform to some or all of the obligations described in Article 8.4 (Market access) or Article 8.5 (National treatment), as specified in its Schedule of specific commitments.

2. Pursuant to paragraph 1, a Party's measures shall be set out solely for the purposes of transparency, shall be accurate at the time of submission and shall not affect the rights and obligations of that Party under this Chapter. In the event of any discrepancies between the measures so specified by the Party and in Annex 8-H (Schedule of specific commitments of India), the latter shall prevail.

3. Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Article.

ARTICLE 8.11

Modification of schedules

1. A Party (the "modifying Party") may notify the other Party (the "affected Party") a proposal to modify or withdraw any commitment in its schedule in Annex 8-E (Schedule of existing measures of the European Union), Annex 8-F (Schedule of future measures of the European Union) or Annex 8-H (Schedule of specific commitments of India) at any time after three years from the date on which that commitment entered into force.

2. Upon notification of such proposal, the Parties shall enter into consultations on the modification and on any appropriate compensatory adjustments.

3. If the Parties fail to enter into consultations within four months after the date of such notification or fail to reach a mutually satisfactory understanding within six months from the date of entering into consultations, the modifying Party may request the Committee on Services and Digital Trade, established pursuant to Article 18.3(1) (Specialised committees), to consider the proposed modification or withdrawal and compensatory adjustments, if any. If the Committee on Services and Digital Trade does not reach a mutually satisfactory understanding within six months, the matter shall be referred to the Joint Committee.

4. In consultations on appropriate compensatory adjustments pursuant to paragraphs 2 and 3, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is no less favourable to trade than provided for at the time of the consultations in the schedules in Annex 8-E (Schedule of existing measures of the European Union), Annex 8-F (Schedule of future measures of the European Union) and Annex 8-H (Schedule of specific commitments of India).

5. If the Parties reach a mutually satisfactory understanding pursuant to paragraphs 3 and 4 of this Article, the Joint Committee shall adopt a decision to amend the schedules in Annex 8-E (Schedule of existing measures of the European Union), Annex 8-F (Schedule of future measures of the European Union) or Annex 8-H (Schedule of specific commitments of India) in accordance with Article 18.2 (Functions of the Joint Committee).

## ARTICLE 8.12

### Domestic regulation

1. For the purposes of this Article, the following definitions apply:

(a) "authorisation" means permission to supply a service, resulting from a procedure to which a person of a Party must adhere in order to demonstrate compliance with licensing and qualification requirements; and

(b) "competent authority" means a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in point (a).

2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

3. This Article does not apply to:

(a) a sector which remains non-committed by reason of a Party's schedule in Annex 8-E (Schedule of existing measures of the European Union), Annex 8-F (Schedule of future measures of the European Union) or Annex 8-H (Schedule of specific commitments of India); or

(b) a measure, to the extent that it is not subject to Article 8.4 (Market access) or Article 8.5 (National treatment) by reason of a Party's commitments made in accordance with Article 8.8 (Schedule of specific commitments) or Article 8.9 (Non-conforming measures).

4. With a view to ensuring that measures relating to qualification requirements and procedures, licensing requirements and procedures, and technical standards, do not constitute unnecessary barriers to trade in services, the Parties shall review the results of the WTO negotiations on disciplines on such measures, pursuant to paragraph 4 of Article VI of the GATS, and shall consider amending this Article, as appropriate, after consultations, to give effect to those results under this Chapter. Such disciplines shall aim to ensure that such requirements are, among others:

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

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

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

5. In sectors in which a Party has undertaken commitments, pending the entry into force of disciplines pursuant to paragraph 4 of this Article, a Party shall not apply licencing and qualification requirements and procedures, and technical standards that nullify or impair such commitments in a manner which:

(a) does not comply with the criteria outlined in points (a), (b), or (c) of paragraph 4 of this Article; and

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

6. In determining whether a Party is in conformity with its obligations under paragraph 5, international standards of relevant international organisations[1] applied by that Party shall be taken into account.

7. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If a service for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

8. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. [2] If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

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[1] "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

[2] Competent authorities are not required to start considering applications outside of their official working hours and working days.

9. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) endeavour to accept applications in electronic format, including remotely, and, where applicable, under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and

(b) where they deem appropriate, accept copies of documents that are authenticated in accordance with its laws and regulations, in place of original documents.

10. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) to the extent practicable, establish an indicative timeframe for the processing of an application;

(b) on request of the applicant, provide information concerning the status of the application without undue delay;

(c) within a reasonable period of time and if they consider the submission of an application is complete for the purposes of processing under its laws and regulations, inform the applicant of the decision concerning the application, to the extent possible, in writing;[1]

(d) if they consider an application incomplete for the purposes of processing under the Party's laws and regulations, within a reasonable period of time, and to the extent practicable:

  (i) inform the applicant that the application is incomplete;

  (ii) on request of the applicant, identify the additional information that is required to complete the application or otherwise provide guidance on why the application is considered incomplete; and

  (iii) provide the applicant with the opportunity[2] to provide the additional information, and to correct deficiencies in the application; and

(e) if an application is rejected, to the extent practicable, either upon their own initiative or upon request of the applicant, inform the applicant, without undue delay and in writing, of the reasons for rejection. The applicant shall have the possibility of resubmitting, at its discretion, a new application.

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[1] Competent authorities may meet the requirement by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates either acceptance of the application or rejection of the application. The reference to "in writing" should be understood as including electronic format.

[2] Such "opportunity" does not require a competent authority to provide extensions of deadlines.

11. Where a Party requires authorisation for the supply of a service, it shall ensure that any authorisation fees[1] charged by its competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service. Each Party is encouraged to accept payment of authorisation fees by electronic means.

12. Each Party shall provide adequate procedures to verify the competence of professionals of the other Party. In verifying and assessing qualifications, where the competent authority considers it relevant, it shall give due consideration to professional experience, as a complement to educational qualifications, and to membership in a professional association in the territory of the other Party.

13. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall endeavour to identify any deficiency and inform the applicant of requirements to remedy the deficiency.

14. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable:

(a) ensure that the examination is scheduled at reasonably frequent intervals;

(b) provide a reasonable period of time to enable applicants to submit applications to take the examination;

[1] For the purpose of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

(c) accept requests in electronic format to take the examination; and

(d) consider conducting the examination and other aspects of the examination process through electronic means, including remotely.

15. If a Party adopts or maintains a measure relating to the authorisation for the supply of a service, it shall ensure that the competent authority concerned reaches and administers its decisions in a manner independent from the undue influence of any supplier of the service for which the authorisation is required.[1]

16. If a Party requires authorisation, the Party shall promptly publish[2] the information necessary for obtaining such authorisation. If such information exists, it may include:

(a) the licensing and qualification requirements and procedures;

(b) contact information of relevant competent authorities;

(c) authorisation fees;

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[1] For greater certainty, this paragraph does not mandate a particular administrative structure. It refers to the decision-making process and administering of decisions.

[2] For the purposes of this Article, "publish" means to include in an official publication, such as an official journal, or on an official website.

(d) procedures for appeal or review of decisions concerning applications; and

(e) indicative timeframes for the processing of an application.

17. Each Party shall encourage its competent authorities to respond to any request for information or assistance to the extent practicable.

ARTICLE 8.13

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a third country. That recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the third country concerned, or may be accorded autonomously.

2. Where a Party enters into an agreement or arrangement of the type referred to in paragraph 1 with a third country or accords recognition autonomously, that Party shall, on request of the other Party, initiate the negotiation of a mutual recognition agreement or similar arrangement with the other Party with a view to concluding such agreement or arrangement or autonomous recognition, to the extent practicable, within 30 months.

3. Each Party shall:

(a) within 18 months of the date of entry into force of this Agreement, inform the other Party of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred in paragraphs 1 and 2;

(b) promptly inform the other Party of the opening of negotiations on an agreement or arrangement with a third country in order to provide adequate opportunity to the other Party to indicate its interest in participating in such negotiations; and

(c) promptly inform the other Party when it adopts new recognition measures or significantly modifies existing ones, and state whether the measures are based on an agreement or arrangement of the type referred in paragraphs 1 and 2.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and third countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. As set out in Annex 8-B (Professional services), each Party shall endeavour to facilitate trade in professional services, including through negotiating mutual recognition agreements or similar arrangements for the recognition of professional qualifications in the professions where the relevant bodies in their respective territories have expressed mutual interest for such recognition.

## ARTICLE 8.14

### Indian traditional medicine services

1. For the purposes of this Article, "Indian traditional medicine services" means services relating to Ayurveda, Yoga, Naturopathy, Unani, Siddha, Sowa-Rigpa and Homeopathy.

2. The Parties recognise Indian traditional medicine services as health and wellness-related services and agree to facilitate trade in such services, as set out in this Article. The Parties also note the importance of public health, patient safety and consumer protection in the provision of Indian traditional medicine services.

3. This Article applies to measures by a Party affecting the supply of Indian traditional medicine services. It does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.9 (Non-conforming measures).

4. The European Union shall allow suppliers of Indian traditional medicine services to supply their services in its territory under the supplier's professional title obtained in India, if the supply of traditional medicine services is not reserved to a regulated profession[1].

5. If licensing or registration is required in the European Union to supply Indian traditional medicine services, the requirements and processes for such licensing or registration shall:

(a) not be less favourable than the treatment accorded to like traditional medicine services and like service suppliers of third countries in accordance with Article 8.6 (Most-favoured-nation treatment); and

[1] For the European Union, a regulated profession is understood as defined in Article 3 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. For Member States in which the supply of Indian traditional medicine services is considered to be a regulated profession in accordance with this Directive, suppliers of Indian traditional medicine services may be required to hold a specific degree such as a medical degree, sit special exams such as state exams or register with a professional body before they can supply such services.

(b) not amount to or be equivalent to requalification in the European Union.

6. The European Union shall allow suppliers of Indian traditional medicine services from India to establish a commercial presence in its territory through which such suppliers can supply Indian traditional medicine services.

7. The Parties shall endeavour to exchange information on regulations, measures and initiatives related to Indian traditional medicine services to facilitate trade in Indian traditional medicine services between the Parties.

## ARTICLE 8.15

### 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 obligations under Article 8.4 (Market access), Article 8.5 (National treatment) and Article 8.6 (Most-favoured-nation treatment).

2. If Party's monopoly supplier of a service 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 commitments, that 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 a 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, it may request the other Party establishing, maintaining or authorising such a supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its commitments, that Party shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and paragraphs 2 to 5 of Article 8.11 (Modification of schedules) shall apply.

5. This Article applies 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 8.16

Disclosure of confidential information

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

ARTICLE 8.17

Business practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.15 (Monopolies and exclusive service suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

## ARTICLE 8.18

### Denial of benefits

1. A Party may deny the benefits of this Chapter and of Article 13.4(1) (Enquiries), Article 19.1 (Current account) and Article 19.2 (Capital movements):

(a) to the supply of any service, if that Party establishes that the service is supplied from or in the territory of a third country;

(b) to a service supplier that is a juridical person, if that Party establishes that it is not a service supplier of the other Party; or

(c) in the case of the supply of a maritime transport service, if that Party establishes that the service is supplied:

(i) by a vessel registered under the laws and regulations of a third country; and

(ii) by a person of a third country which operates or uses the vessel in whole or in part.

2. A Party may deny the benefits of this Chapter and of Article 13.4(1) (Enquiries), Article 19.1 (Current account) and Article 19.2 (Capital movements) to a service supplier of the other Party that is a juridical person of that Party and to services of that service supplier if:

(a) a service supplier of a third country owns or controls the juridical person; and

(b) the denying Party adopts or maintains a measure with respect to the third country, or with respect to juridical persons or natural persons of the third country, that prohibits transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

ARTICLE 8.19

Safeguard measures

1. The Parties note that Article X of GATS provides for multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The Parties shall review the issue of emergency safeguard measures related to trade in services in light of any provisions agreed under Article X of GATS with a view to their incorporation into this Chapter.

2. If a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address those difficulties.

ARTICLE 8.20

Subsidies

1. Notwithstanding Article 8.1(6) (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. If a Party considers that it is adversely affected by a subsidy of the other Party related to trade in services, the Party may request information from the other Party on such matters.

3. Upon receipt of a request for consultations, the requested Party may enter into consultations with the requesting Party, with a view to resolving the matter, provided that the request for consultations includes an explanation of how the subsidy has adversely affected trade in services between the Parties. During the consultations, the Party granting the subsidy may consider a request of the other Party for information relating to the subsidy.

4. Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Article.

# CHAPTER 9

# DIGITAL TRADE

## SECTION A

## GENERAL PROVISIONS

### ARTICLE 9.1

### Objective

The objective of this Chapter is to facilitate digital trade, address unjustified barriers to trade enabled by electronic means and ensure an open, secure and trustworthy online environment for businesses and consumers.

ARTICLE 9.2

Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.

2. This Chapter does not apply to:

(a) audio-visual services;

(b) government procurement; or

(c) information or data, except government data accessible to the public as referred to in Article 9.12 (Open government data), held or processed by or on behalf of a Party, or measures related to such information or data, including measures related to its collection.

3. For greater certainty, a measure that affects the supply of a service delivered or performed electronically is subject to the obligations contained in the relevant provisions of Chapter 8 (Trade in services) and Annexes 8-C (Financial services) and 8-D (Telecommunications services), including the Party's schedules of specific commitments, non-conforming measures or exceptions set out in this Agreement that are applicable to those obligations.

ARTICLE 9.3

Definitions

1. The definitions set out in Article 8.2 (Definitions) apply to this Chapter unless otherwise defined in this Chapter.

2. For the purposes of this Chapter:

(a) "electronic authentication" means an electronic process that enables the confirmation of:

   (i) the electronic identification of a person; or

   (ii) the origin and integrity of data in electronic form;

(b) "electronic invoicing" means the automated creation, exchange and processing of an invoice between a supplier and a buyer using a structured digital format;

(c) "electronic signature"[1] means data in electronic form that is in, affixed to, or logically associated with, other data in electronic form that may be used to identify the signatory in relation to the data in electronic form and indicate the signatory approval of the information contained therein;[2]

(d) "electronic time stamp" means data in electronic form which binds other data in electronic form to a particular date and time, establishing evidence that the latter data existed at that date and time;

(e) "electronic trust service" means an electronic service consisting of:

(i) the creation, verification and validation of electronic signatures, electronic seals, electronic time stamps, and certificates related to those services; or

(ii) the preservation of electronic signatures, seals or certificates related to those services;

(f) "government data" means non-proprietary data owned or held by the government and by non-governmental bodies in the exercise of powers conferred on them by the government;

1 For the European Union, "electronic signature" applies to natural persons and "electronic seal" applies to juridical persons. For India, the term "electronic seal" is not defined in its laws and the term "electronic signature" applies to both natural and juridical persons.

2 For greater certainty, nothing in this provision prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the data in electronic form has not been altered or verifying the identity of the signatory.

(g) "measure of a Party" means a measure taken by:

   (i) central government and authorities of that Party; or

   (ii) non-governmental bodies in the exercise of powers delegated by central government or authorities of that Party;

(h) "personal data" means any information or data about or relating to an identified or identifiable natural person;

(i) "user" means any person using a public telecommunications service; and

(j) "unsolicited commercial electronic message" means an electronic message[1] that is sent for commercial advertising or marketing purposes directly to a user via a public telecommunications service, without the consent of the recipient or despite the explicit rejection of the recipient.

[1] For greater certainty, an electronic message comprises at least text messages (Short Message Service or "SMS") and, to the extent provided for under the laws and regulations of a Party, other electronic messages such as, electronic mail, multimedia (Multimedia Message Service or "MMS") messages, and other types of electronic messages.

ARTICLE 9.4

Right to regulate

Consistent with the provisions of this Chapter, each Party retains its right to regulate within its territory to achieve its legitimate policy objectives.

SECTION B

PERSONAL DATA PROTECTION

ARTICLE 9.5

Privacy and protection of personal data

1. Each Party recognises that privacy is a fundamental right and that high standards of privacy and protection of personal data contribute to trust in the digital economy and to the development of trade.

2. Nothing in this Agreement shall affect the right of each Party to decide on its own level of protection of personal data and privacy. Each Party may adopt or maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data.

3. Each Party shall endeavour to inform the other Party about safeguards referred to in paragraph 2 that it adopts or maintains.

## SECTION C

## SPECIFIC PROVISIONS

### ARTICLE 9.6

### Paperless trading

1. With a view to creating a paperless border environment for trade in goods, the Parties recognise the importance of eliminating paper forms and documents for the import, export or transit of goods. Each Party shall work towards implementing initiatives which provide for the use of paperless trading and transition toward using forms and documents in data-based formats, taking into account the principles and guidelines agreed by the WCO and other relevant international organisations to which both Parties are members.

2. Each Party shall endeavour to make trade administration documents, that it issues or controls, or that are required in the normal course of trade, and as appropriate, supporting documents, available to the public in electronic format. For the purposes of this paragraph, the term "electronic format" includes formats, suitable for automated interpretation and electronic processing without human intervention, as well as digitised images and forms.

3. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

4. The Parties shall endeavour to cooperate bilaterally and in international fora, in order to enhance acceptance of electronic versions of trade administration documents.

## ARTICLE 9.7

### Conclusion of contracts by electronic means

Unless otherwise provided for under its laws and regulations, each Party shall ensure that:

(a) contracts may be concluded by electronic means; and

(b) no other obstacles to the use of electronic contracts are created or maintained and contracts are not deprived of legal effect and validity solely on the ground that the contract has been made by electronic means.

ARTICLE 9.8

Electronic authentication and electronic trust services

1. Except in circumstances otherwise provided for in its laws and regulations, a Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an authenticated electronic document, an electronic signature, an electronic seal or an electronic time stamp, solely on the ground that it is in electronic form.

2. A Party shall not adopt or maintain measures that:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for that transaction; or

(b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication or an electronic trust service in that transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require, for a particular category of transactions, that the method of electronic authentication or trust service is certified by an authority accredited in accordance with its laws and regulations or meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of transactions concerned.

4. The Parties shall endeavour to mutually recognise electronic signatures in accordance with their laws and regulatory frameworks.

## ARTICLE 9.9

### Transfer of or access to source code

1. A Party shall not require the transfer of, or access to, the source code of software owned by a person of the other Party as a condition for the import, export, distribution, sale or use of such software, or of products containing such software, in or from its territory.[1]

[1] This Article does not preclude a Party from requiring that access be provided to source code of software used for critical infrastructure, to the extent required to ensure the effective functioning of such critical infrastructure, subject to safeguards against unauthorised disclosure.

2. For greater certainty:

(a) Article 19.7 (General exceptions), Article 19.8 (Security exceptions) and Article 8-C.3 (Prudential carve-out) may apply to measures of a Party adopted or maintained in the context of the transfer of or access to source code, including certification procedures;

(b) paragraph 1 of this Article does not apply to the voluntary transfer of, or granting of access to, source code of software by a person of the other Party on a commercial basis, such as in the context of a public procurement transaction or other freely negotiated contracts; and

(c) paragraph 1 of this Article does not affect the right of a Party's regulatory authorities, law enforcement, judicial bodies, administrative tribunals or conformity assessment bodies to require the modification of source code of software to comply with its laws and regulations that are not inconsistent with the Agreement.

3. Nothing in this Article shall affect:

(a) the right of a Party's regulatory authorities, law enforcement, judicial bodies, administrative tribunals or conformity assessment bodies[1] to require the transfer of, or access to, source code of software, as a condition for import, export, distribution, sale or use of such software, for investigation, inspection or examination, enforcement action or judicial proceeding purposes, to secure compliance with its laws and regulations pursuing legitimate public policy objectives[2], subject to safeguards against unauthorised disclosure;

(b) the requirements of a court, administrative tribunal, competition authority, or other relevant body of a Party to remedy a violation of competition law, or requirements pursuant to a Party's laws and regulations that are not inconsistent with the Agreement to provide proportionate and targeted access to the source code of software that is necessary to address barriers to entry in digital markets and ensure that digital markets remain competitive, fair, open and transparent; and

(c) the protection and enforcement of intellectual property rights.

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1 For the purpose of this Article, "conformity assessment body" refers to a relevant governmental body or authority of a Party, or non-governmental body in the exercise of powers delegated by a governmental body or authority of the Party, carrying out the procedures of assessment of conformity with applicable laws and regulations of that Party.

2 For the purpose of this Article, "legitimate public policy objective" shall be interpreted in an objective manner and shall enable the pursuit of objectives such as the protection of public security, public morals, or human, animal or plant life or health, the maintenance of public order, the protection of other fundamental interests of society such as online safety, cybersecurity, safe and trustworthy artificial intelligence, or the protection against the dissemination of disinformation, or other similar objectives of public interest, taking into account the evolving nature of digital technologies and related challenges.

ARTICLE 9.10

Online consumer trust and protection

1. Recognising the importance of enhancing consumer trust and protection in digital trade, each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including transparent and effective measures that:

(a) proscribe misleading, fraudulent and deceptive commercial practices;

(b) require suppliers or sellers of goods and services to act in good faith and abide by fair commercial or trade practices;

(c) require suppliers or sellers of goods or services to provide consumers with clear and thorough information, including when they act through intermediary service suppliers, regarding their identity and contact details, the transaction concerned, including the main characteristics of the goods or services and the full price inclusive of all applicable charges. In the case of intermediary service suppliers, this includes enabling the provision of such information by the supplier or seller of goods or services;

(d) grant consumers access to redress for breaches of their rights, including a right to remedies if goods or services are paid for and are not delivered or provided as agreed; and

(e) ensure the safety of goods during normal or reasonably foreseeable use.

2. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between their agencies in order to protect consumers and enhance online consumer trust.

ARTICLE 9.11

Unsolicited commercial electronic messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require the consent, as specified in its laws and regulations, of the users that are natural persons to receive a commercial electronic message;

(b) require a supplier of commercial electronic messages to facilitate the ability of users that are natural persons to prevent ongoing reception of those messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Notwithstanding paragraph 1, a Party shall allow persons who have collected, in accordance with conditions laid down in the law of that Party, the contact details of a user in the context of the supply of goods or services, to send commercial electronic messages to that user for their own similar goods or services.

3. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable users to request cessation free of charge and at any moment.

4. Each Party shall provide users with access to redress against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1, 2 and 3.

5. To the extent provided for under its laws and regulations, a Party shall apply paragraphs 1 to 4 to other forms of commercial electronic message that is sent for commercial advertising, such as electronic mail, SMS and MMS.

ARTICLE 9.12

Open government data

1. The Parties recognise that facilitating public access to, and use of, government data contributes to stimulating economic and social welfare, competitiveness, productivity and innovation.

2. If a Party chooses to make government data accessible to the public, it shall endeavour to ensure to the extent practicable, that such data:

(a) is in a format that allows it to be searched, retrieved, used, reused and redistributed;

(b) is in a machine-readable format;

(c) contains descriptive metadata, which is as standard as possible;

(d) is made available via reliable, user-friendly and freely available application programming interfaces;

(e) is regularly updated; and

(f) is made available for re-use in full compliance with the Parties' respective personal data protection rules.

3. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to, and use of, government data that the Party has made public, with a view to enhancing and generating business and research opportunities beyond its use by the public sector.

4. The Parties recognise the benefit of making data held by regional or local government digitally available for public access and use in a manner consistent with paragraphs 1, 2 and 3.

## ARTICLE 9.13

### Cooperation on regulatory and technical issues

The Parties recognise the importance of cooperation and information exchange on digital trade. Where agreed by the Parties, the Parties shall exchange information on the following regulatory and technical issues in the context of digital trade:

(a) the recognition and facilitation of interoperable electronic authentication and electronic trust services;

(b) unsolicited commercial electronic messages;

(c) challenges for small and medium-sized enterprises in digital trade;

(d) digital government;

(e) online consumer trust and protection; and

(f) any other area relevant for the development of digital trade as mutually agreed by the Parties.

ARTICLE 9.14

Digital identities

1. The Parties recognise that cooperation between them on digital identities is important to promote connectivity and further growth of digital trade. The Parties recognise that they may take different legal and technical approaches to digital identities. Accordingly, the Parties support ongoing work, in particular under the India-EU Trade and Technology Council, to pursue mechanisms to promote interoperability between their respective digital identity frameworks.

2. The Parties shall endeavour to facilitate initiatives to promote interoperability, which may include:

(a) supporting the development of international frameworks and standards for digital identity;

(b) identifying and implementing use cases for the mutual recognition of digital identities; and

(c) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and the promotion of the use of digital identities.

ARTICLE 9.15

Cybersecurity

1. The Parties have a shared vision to promote secure digital trade and recognise that threats to cybersecurity undermine confidence in digital trade. In order to identify and mitigate those threats and thereby facilitate digital trade, the Parties recognise the importance of:

(a) building the capabilities of their appropriate competent authorities responsible for cybersecurity incident response, including through exchange of best practices;

(b) using existing collaboration mechanisms, as appropriate, to anticipate, identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks of Parties and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness; and

(c) promoting the development of a strong public and private workforce in the area of cybersecurity.

2. Given the evolving nature of cybersecurity threats and their negative impact on digital trade, the Parties recognise that risk-based approaches are generally effective in addressing those threats and minimising trade barriers. Accordingly, each Party shall endeavour to employ, and shall encourage enterprises within its jurisdiction to use, risk-based approaches that rely on open and transparent standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity incidents.

ARTICLE 9.16

Electronic invoicing

1. The Parties recognise the importance of promoting the adoption of electronic invoicing systems and their role in increasing the efficiency, accuracy and reliability of commercial transactions. To this end, the Parties shall endeavour to:

(a) promote, encourage, support or facilitate the adoption of electronic invoicing by enterprises;

(b) promote the existence of policies, standards, infrastructure and processes that support electronic invoicing;

(c) generate awareness of, and build capacity for, electronic invoicing; and

(d) share best practices and take into account the relevant international electronic invoicing systems.

2. Each Party shall encourage the development of measures related to electronic invoicing to support cross-border interoperability, including by taking into account international standards, guidelines or recommendations, as appropriate.

ARTICLE 9.17

Review

No later than five years after the date of entry into force of this Agreement, the Parties shall review the need for the inclusion of additional provisions, including on the cross-border data flow, in this Agreement.

CHAPTER 10

Intellectual property

SECTION A

GENERAL PROVISIONS

ARTICLE 10.1

Objectives

1. The objective of this Chapter is to ensure appropriate and effective protection and enforcement of intellectual property rights in each Party in order to:

(a) promote innovation and creativity;

(b) facilitate trade of innovative and creative goods and services; and

(c) reduce distortion and impediments to trade and incentivise investments in a manner conducive to a more sustainable and inclusive economy.

2. The objectives set out in Article 7 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 10.2

Principles

The principles set out in Article 8 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 10.3

Scope

1. This Chapter shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. This Chapter does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights under its law than is required by this Chapter, provided that such protection and enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

3. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention.

ARTICLE 10.4

Definitions

For the purposes of this Chapter:

(a) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

(b) "Doha Declaration" means the Declaration on the TRIPS Agreement and Public Health, adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO;

(c) "intellectual property" means all categories of intellectual property that are covered by Articles 10.11 (Authors) to 10.40 (Protection of plant varieties rights) of this Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement;

(d) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party;

(e) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967;

(f) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961;

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

(h) "WPPT" means the WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.

## ARTICLE 10.5

### International agreements

1. The Parties affirm their commitments under the following international agreements:

(a) the TRIPS Agreement;

(b) WIPO Copyright Treaty, done at Geneva on 20 December 1996;

(c) the WPPT;

(d) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done at Marrakesh on 27 June 2013; and

(e) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as amended on 3 October 2006 and on 12 November 2007.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

(a) the Beijing Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012; and

(b) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall consider ratifying or acceding to the Singapore Treaty on the Law of Trademarks, adopted in Singapore on 27 March 2006.

4. Each Party shall ensure that the procedures provided under the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979, modified on 3 February 1984 and last modified on 3 October 2001, are available in its territory.

ARTICLE 10.6

TRIPS Agreement and public health

1. The Parties affirm the Doha Declaration. In interpreting and implementing the rights and obligations under this Chapter, each Party shall ensure consistency with the Doha Declaration.

2. Nothing in this Chapter shall limit a Party's rights and obligations pursuant to Article 31 and Article 31*bis* of the TRIPS Agreement, and to the Annex and the Appendix to the Annex to the TRIPS Agreement.

ARTICLE 10.7

Exhaustion

This Chapter does not affect the freedom of a Party to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 10.8

National treatment

1. In respect of the intellectual property covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT or the Treaty on Intellectual Property in Respect of Integrated Circuits done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Chapter.

2. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory or to appoint an agent in its territory, provided that such exceptions are:

(a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Chapter; and

[1] For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter, including measures to prevent the circumvention of effective technological measures as referred to in Article 10.18 (Obligations concerning technological measures) and measures concerning rights management information referred to in Article 10.19 (Obligations concerning rights management information).

(b) not applied in a manner which would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 10.9

Transfer of technology

1. The Parties recognise the importance of facilitating the voluntary transfer and dissemination of technology. The Parties further recognise the importance of the protection and enforcement of intellectual property, in this regard.

2. The Parties agree to exchange views and information on their law and international practices, including those related to the protection and enforcement of intellectual property rights, regarding transfer of technology. This may include exchanges on measures to facilitate information flows, business partnerships and voluntary licensing and subcontracting agreements. Particular attention shall be paid to the conditions necessary to promote technology linkage and innovation and to create an adequate enabling environment for technology transfer in the host countries, including issues such as the relevant legal framework and development of human capital.

ARTICLE 10.10

Genetic resources, traditional knowledge and traditional cultural expressions

1. The Parties affirm the importance of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted at Geneva on 24 May 2024.

2. The Parties affirm the importance of the work carried out on traditional knowledge and traditional cultural expressions by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

3. The Parties agree to exchange views and information on intellectual property related aspects of genetic resources, traditional knowledge and traditional cultural expressions.

4. The Parties acknowledge that the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications promotes the transparency of the patent system with regard to genetic resources and associated traditional knowledge, and recognise the importance of using relevant and available databases or digital libraries, such as the Traditional Knowledge Digital Library[1], in that respect.

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[1] The Traditional Knowledge Digital Library project initiated in India in 2001.

## SECTION B

## STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

### SUB-SECTION 1

### COPYRIGHT AND RELATED RIGHTS

#### ARTICLE 10.11

#### Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or otherwise of the original and copies of their works;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their works in respect of at least computer programs[1] and cinematographic works.

## ARTICLE 10.12

### Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation of their unfixed performances;

(b) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of fixations of their performances;

[1] A Party may exclude computer programs where the program itself is not the essential object of the rental.

(c) the distribution to the public, by sale or otherwise, of the original or copies of fixations of their performances;

(d) the commercial rental to the public of the original and copies of fixations of their performances;

(e) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(f) the broadcasting, at least by wireless means, and the communication to the public of their unfixed performances except where the performance is already a broadcast performance.

ARTICLE 10.13

Producers of phonograms

Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit:

(a) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of the original or copies of their phonograms;

(c) the commercial rental to the public of the original and copies of their phonograms; and

(d) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 10.14

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) any reproduction by any means or in any manner or form, in whole or in part, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the distribution to the public, by sale or otherwise, of fixations including copies thereof, of their broadcasts whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(d) the rebroadcasting of their broadcasts, at least by wireless means;

(e) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of a fee; and

(f) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 10.15

Broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide performers and producers of phonograms with:

(a) the right to a single equitable remuneration paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public; or

(b) the exclusive right to authorize or prohibit the broadcasting or any communication to the public of their phonograms published for commercial purposes.

2. For the purposes of point (a) of paragraph 1, a Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. A Party may, in the absence of an agreement between performers and producers of phonograms, set the terms according to which performers and producers of phonograms shall share such single equitable remuneration.

3. For the purposes of point (b) of paragraph 1, a Party shall ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

ARTICLE 10.16

Resale right

1. Each Party shall provide, for the benefit of the author of an original work of art,[1] a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 applies to all acts of resale involving at least art market professionals such as salesrooms, art galleries and, in general, any dealers in works of art as sellers, buyers or intermediaries.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than a certain minimum period of time before that resale and where the resale price does not exceed a certain minimum amount.

4. The procedure for collection of the remuneration and its amount shall be determined by the law of each Party.

[1] For the purposes of this Article, works of art shall include at least paintings, sculptures and drawings.

ARTICLE 10.17

Collective management of rights

1. The Parties shall promote cooperation between the collective management organisations established in their respective territories for the purposes of facilitating licensing of works and other protected subject matter under this Sub-Section and the transfer of rights revenue between the respective collective management organisations for the use of works or other protected subject matter.

2. The Parties shall promote the transparency of collective management organisations established in their respective territories, in particular regarding the rights revenue they collect, the deductions they make from the rights revenue collected, the use of the rights revenue collected, their distribution policies and the repertoire they represent.

3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of rights holders that these organisations represent either directly or via another collective management organisation.

4. Each Party shall encourage collective management organisations established in its territory and that represent another collective management organisation established in the territory of the other Party by way of a representation agreement to regularly, diligently and accurately distribute amounts due to the represented collective management organisations, as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

ARTICLE 10.18

Obligations concerning technological measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by the right holder of any copyright or related right in connection with the exercise of their rights provided under this Sub-Section that restrict acts, in respect of their works and other subject matter, which are not authorized by the right holder of any copyright or related right concerned or permitted by law, if the person concerned carries out such circumvention in the knowledge, or with reasonable grounds to know, that they are pursuing that objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.

ARTICLE 10.19

Obligations concerning rights management information

1. Each Party shall provide adequate and effective legal remedies against a person knowingly performing without authority any of the following acts, if such person knows or has reasonable grounds to know that by so doing that person is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of that Party:

(a) the removal or alteration of any electronic rights management information; or

(b) the distribution, importation for distribution, broadcasting, communication, or making available to the public of works, including copies thereof, or other subject matter protected pursuant to this Sub-Section knowing that electronic rights management information has been removed or altered without authority.

2. For the purposes of this Article, "rights management information" means any information which identifies the work or other subject matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 applies if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Article.

## ARTICLE 10.20

### Term of protection

1. Each Party shall provide that the rights of an author of a work shall run for the life of the author and no less than 60 years after the author's death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of anonymous or pseudonymous works, the term of protection shall run for no less than 60 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to their identity, or if the author discloses their identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

3. In the case of a work of joint authorship, the term of protection referred to in paragraph 1 shall be calculated from the date of death of the last surviving author.

4. Each Party shall provide that the rights of the broadcasting organizations shall run for no less than 25 years from the date of the first transmission of the broadcast whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

5. Each Party shall provide that the rights of performers for their performances shall run for no less than 50 years from the date of the performance.

6. The term of protection to be granted to producers of phonograms under this Chapter shall last, at least, until the end of a period of 60 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from the fixation of the phonogram, the term of protection shall last, at least, until the end of a period of 50 years computed from the end of the year in which the fixation was made. Each Party may provide for effective measures in order to ensure that the profit generated during the 10 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

7. Each party shall provide that the terms of protection laid down in this Article shall be calculated from the first day of January of the year following the event which gives rise to them.

8. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 10.21

Limitations and exceptions

Each Party may provide for limitations or exceptions to the rights set out in Articles 10.11 (Authors) to 10.15 (Broadcasting and communication to the public of phonograms published for commercial purposes) provided that those limitations or exceptions are confined to certain special cases which do not conflict with a normal exploitation of the work or other subject matter, and do not unreasonably prejudice the legitimate interests of the right holders.

SUB-SECTION 2

TRADE MARKS

ARTICLE 10.22

Signs of which a trade mark may consist

1. A trade mark may consist of any signs, or any combination of signs, in particular words, including personal names, letters, numerals, figurative elements, colours or combinations of colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the respective trade mark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

2. A Party may require, as a condition for registration of a trade mark, that the mark be capable of being represented graphically.

3. Where signs are not inherently capable of distinguishing the relevant goods or services, each Party may make registrability depend on distinctiveness acquired through use.

## ARTICLE 10.23

### Registration procedure

1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including any partial refusals of registration, shall be communicated in writing to the relevant party, including by electronic means, and shall be duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose:

(a) trade mark applications; or

(b) where appropriate, trade mark registrations.

3. The opposition proceedings referred to in paragraph 2 shall be adversarial.

4. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.

ARTICLE 10.24

Trade mark classification

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957.

ARTICLE 10.25

Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

(a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trade mark; and

(c) any sign where, because of its identity with, or similarity to, the registered trade mark used in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the territory of the Party and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the registered trade mark.

2. The rights described under paragraph 1 shall not prejudice any existing prior rights, nor shall they affect the possibility of each Party to make rights available on the basis of use.

## ARTICLE 10.26

### The right to prohibit acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or

(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

ARTICLE 10.27

Well-known trade marks

1. For the purposes of giving effect to protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall endeavour to apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO in Geneva on 20 to 29 September 1999.

2. No Party shall require, as a condition for determining that a trade mark is well-known, that the trade mark has been registered in the Party or in another jurisdiction.

ARTICLE 10.28

Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark, such as the fair use of descriptive terms, including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.

2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party, where the third party is a natural person;

(b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or

(c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

3. Paragraph 2 applies where a use by the third party is in accordance with honest practices in industrial or commercial matters.

## ARTICLE 10.29

### Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years, the trade mark has not been put to genuine use in the relevant territory of a Party in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use[1]. However, no person may claim that the proprietor's rights in a trade mark should be revoked if, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

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[1] For the purposes of this Article, each Party may interpret "proper reasons for non-use" as "non-use of a trade mark due to special circumstances in trade that affected its use and not due to any intention to abandon or not to use the trade mark".

2. A trade mark shall also be liable to revocation if, after the date on which it was registered:

(a) as a consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a good or service in respect of which it is registered; or

(b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, in particular as to the nature, quality or geographical origin of those goods or services.

## ARTICLE 10.30

### Bad faith applications

A trade mark shall be liable to be declared invalid if the application for registration of the trade mark was made in bad faith by the applicant. Each Party may provide that such a trade mark shall not be registered.

SUB-SECTION 3

DESIGNS

ARTICLE 10.31

Protection of registered industrial designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Sub-Section. For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered industrial design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking or using a product or article bearing or embodying a design which is a copy[1], or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

[1] "Copy" shall be understood within the meaning of Article 26 of the TRIPS Agreement.

3. Each Party may provide that a design applied to or incorporated in a product which constitutes a component part of a complex product is only considered to be new or original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty or originality.

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 10.32

International classification system for industrial designs

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968, as amended on 28 September 1979.

ARTICLE 10.33

Duration of protection

The duration of protection available for registered designs, including renewals, shall amount to at least 15 years from the date of filing of the application.

ARTICLE 10.34

Protection of unregistered designs

1. Each Party may confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.

2. The duration of protection available for the unregistered design may amount to at least three years from the date on which the design was first made available to the public in the territory of the respective Party.

ARTICLE 10.35

Exceptions and exclusions

1. Each Party may provide for limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Each Party may provide that the protection of designs shall not extend to designs solely dictated by its technical or functional considerations.

3. Each Party may provide that a design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

4. By way of derogation from paragraph 3, a design shall, in accordance with the conditions set out in Article 10.31(1) (Protection of registered industrial designs), subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 10.36

Relationship to copyright

Each Party shall ensure that unregistered designs shall also be eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION 4

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 10.37

Protection of trade secrets

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret without the consent of the trade secret holder whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and

(b) "trade secret holder" means any person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever it is carried out, without the consent of the trade secret holder, by a person who is found to:

(i) have acquired the trade secret in a manner referred to in point (a);

(ii) be in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) be in breach of a contractual or any other duty to limit the use of the trade secret; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought to have known[1] under the circumstances that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Sub-Section shall be understood as requiring a Party to consider the following conducts as contrary to honest commercial practices:

(a) independent discovery or creation;

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1 For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

(b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;

(c) the acquisition, use or disclosure of a trade secret required or allowed by the law of that Party;

(d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party; or

(e) any other practice which, under the circumstances, is in conformity with honest commercial practices.

5. Nothing in this Sub-Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

ARTICLE 10.38

Civil judicial procedures and remedies of trade secrets

1. Each Party shall provide that its judicial authorities have the authority to order that any person participating in the civil judicial proceedings referred to in Article 10.37(1) (Protection of trade secrets), or who has access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. Each Party shall provide that the judicial authorities have the authority to order that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.

3. In civil judicial proceedings referred to in Article 10.37(1) (Protection of trade secrets), each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures, in accordance with its laws and regulations, to cease, prevent and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order measures, in accordance with its laws and regulations, ordering the cessation or prohibition of the disclosure or use of the trade secret in a manner contrary to honest commercial practices;

(c) order, in accordance with its laws and regulations, a person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known[1] that they were acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

(d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in Article 10.37(1) (Protection of trade secrets). Such specific measures may include, in accordance with each Party's laws and regulations, including the rights of defence, the possibility of:

(i) restricting access to certain documents in whole or in part;

(ii) restricting access to hearings and their corresponding records or transcript; and

(iii) making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted; and

(e) impose sanctions on a person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

1 For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

4. Each Party may provide that an application for the measures, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret was carried out, in accordance with its laws and regulations:

(a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;

(b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions; or

(c) to protect a legitimate interest recognised by the laws and regulations of that Party.

ARTICLE 10.39

Protection of data submitted to obtain marketing authorisation
for pharmaceutical or agricultural chemical products

Each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SUB-SECTION 5

PLANT VARIETIES

ARTICLE 10.40

Protection of plant varieties rights

1. Each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof, in accordance with the TRIPS Agreement.

2. The *sui generis* system referred to in paragraph 1 shall include at least the following elements: scope of protection, application procedure, examination of distinctness, uniformity and stability (DUS), requirements on novelty and denomination, obligations of the right holder and enforcement of rights.

3. The duration of protection available shall amount to at least 18 years for trees and vines, and 15 years for other plant varieties[1].

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[1] A Party may comply with this obligation with shorter terms of protection subject to reviews and renewals.

## SECTION C

## ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### SUB-SECTION 1

### GENERAL PROVISIONS

#### ARTICLE 10.41

#### General obligations

1. Each Party shall provide under its law for measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. For the purposes of this Section, the term "intellectual property rights" does not include rights covered by Sub-Section 4 (Protection of undisclosed information) of Section B (Standards concerning the availability, scope and use of intellectual property rights).

2. The measures, procedures and remedies referred to in paragraph 1 shall be:

(a) fair and equitable;

(b) not unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;

(c) effective, proportionate and dissuasive; and

(d) applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. The Parties understand that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general. Nothing in this Section shall create any obligation with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 10.42

Persons entitled to apply for the application of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in Sub-Section 2 (Civil and administrative enforcement) and Sub-Section 3 (Border enforcement) of this Section:

(a) the holders of intellectual property rights in accordance with the law of a Party;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and

(c) federations and associations, in so far as permitted by and in accordance with the law of a Party. The term "federations and associations" shall include collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

ARTICLE 10.43

Presumption of authorship or ownership

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in this Section:

(a) for the author of a work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to appear on the work in the usual manner; and

(b) point (a) applies *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

SUB-SECTION 2

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 10.44

Measures for preserving evidence

1. Each Party shall provide that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to appropriate safeguards and the protection of confidential information.

2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of these goods and the documents relating thereto.

3. The measures in paragraphs 1 and 2 shall be taken, where appropriate, without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

ARTICLE 10.45

Evidence

1. Each Party shall take the necessary measures to enable its competent judicial authorities to have the authority to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.

2. Each Party shall also take the necessary measures to enable its competent judicial authorities to have the authority to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to conditions which ensure the protection of confidential information.

ARTICLE 10.46

Right of information

1. Each Party shall provide that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1 "any other person" means a person who:

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities; or

(d) was indicated by the person referred to in points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and

(b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. Paragraphs 1 and 2 applies without prejudice to other laws of a Party which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit its own participation or that of their close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 10.47

Provisional and precautionary measures

1. Each Party shall provide that its judicial authorities shall have the authority, upon request of the applicant:

(a) to issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right; and

(b) to order the seizure or delivery up of goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities shall have the authority to order the precautionary seizure of the immovable property of the alleged infringer. Each Party shall also provide that its judicial authorities have the authority to order the precautionary seizure of movable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. Each Party shall provide that its judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 2 have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

ARTICLE 10.48

Corrective measures

1. Each Party shall provide that its judicial authorities may order, upon request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual property right or at least the removal of those goods from the channels of commerce in such a manner as to avoid any harm caused to the right holder. If appropriate, under the same conditions, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 10.49

Injunctions

Each Party shall provide that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities shall have the authority to issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.[1] Each Party shall also provide that the judicial authorities shall have the authority to issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

ARTICLE 10.50

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article 10.48 (Corrective measures) or Article 10.49 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

[1] The obligations in this Section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

ARTICLE 10.51

Damages

1. Each Party shall provide that its civil judicial authorities shall have the authority to, on application of the injured party, order the infringer, who knowingly engaged or had reasonable grounds to know it was engaging in an infringing activity, to pay to the right holder damages appropriate to the actual injury suffered by the right holder as a result of the infringement.

2. Each Party shall provide that when its judicial authorities set the amount of damages:

(a) they take into account the appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or

(b) as an alternative to point (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

3. Where the infringer did not knowingly or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

ARTICLE 10.52

Legal costs

Each Party shall provide that its judicial authorities have the authority to order that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 10.53

Publication of judicial decisions

Each Party shall provide that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, upon request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 10.54

Administrative procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SUB-SECTION 3

BORDER ENFORCEMENT

ARTICLE 10.55

Border measures

1. Each Party shall adopt or maintain procedures, with respect to import shipments, under which a right holder may submit applications[1] requesting customs authorities to suspend the release of or detain suspected goods.[2] For the purposes of this Section, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, or industrial designs.

2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.

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[1] For the purposes of this Sub-Section, a Party may treat "application" as meaning "recordation".

[2] With respect to export shipments, the judicial authorities of India shall have the authority to, upon application from the right holder, prevent the exportation of suspected goods covered in this Sub-Section.

3. Each Party may provide that its customs authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation. If a Party decides to establish a fee to cover the administrative costs resulting from the processing of an application or a recordation, such a fee shall not be set at an amount that unreasonably deters recourse to these procedures.

4. Each Party shall provide that its customs authorities decide about granting or recording application within a reasonable period of time.

5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

6. Each Party shall provide that its customs authorities use risk analysis to identify suspected goods.

7. Each Party may authorise its customs authority to provide a right holder, upon request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, without prejudice to a Party's laws and regulations relating to the protection of confidential information, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.

8. The competent authorities of each Party shall have the authority to order the destruction of goods following a determination that the goods are infringing. Each Party may have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids any harm to the right holder.

9. Each Party may have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.

10. Each Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

11. Each Party shall encourage its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

12. The Parties shall endeavour to cooperate in respect of international trade in suspected goods. In particular, the Parties shall share information on trade in suspected goods affecting the other Party.

13. Without prejudice to other forms of cooperation, Title III of the CCMAA Agreement shall be applicable with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

14. The Committee on Customs and Rules of Origin established pursuant to Article 18.3(1) (Specialised committees) shall be responsible for matters related to the implementation of this Sub-Section.

ARTICLE 10.56

*Ex officio* action

1. With respect to import shipments each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.

2. Each Party shall provide that its competent authorities shall have the authority, where they act on their own initiative, to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Section.

ARTICLE 10.57

Consistency with GATT 1994 and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994, and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION D

OTHER PROVISIONS

ARTICLE 10.58

Modalities of cooperation

1. The Parties shall endeavour to cooperate with a view to supporting implementation of the commitments and obligations in relation to the subject matter covered by this Chapter.

2. The areas of cooperation may include:

(a) exchange of information on the legal framework and policy developments concerning intellectual property rights and relevant rules of protection and enforcement;

(b) exchange of experience on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;

(c) exchange of information on legislative progress;

(d) coordination to prevent exports of counterfeit goods, including coordination with other countries;

(e) technical assistance, capacity building, exchange and training of personnel;

(f) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, business circles and civil society;

(g) public awareness of consumers and right holders;

(h) enhancement of institutional cooperation, particularly between the intellectual property offices;

(i) educating and promoting awareness among the general public relating to policies concerning the protection and enforcement of intellectual property rights;

(j) promotion of the use, protection and enforcement of intellectual property rights with public-private collaboration, including with SMEs, startups and educational institutions;

(k) the formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime;

(l) the arrangements between each Party's collective management organisations;

(m) sharing of best practices on aspects of intellectual property policy and law with the aim of supporting environmental and climate policies, such as the development and deployment of environmental and low-emission technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services; and

(n) implementation of multilateral intellectual property agreements, such as the TRIPS Agreement and the agreements concluded or administered under the auspices of WIPO.

3. The Parties shall, either directly or through the Committee on Intellectual Property Rights, maintain contact on all matters related to the implementation and functioning of this Section.

ARTICLE 10.59

Voluntary stakeholder initiatives

1. Each Party shall endeavour to facilitate voluntary stakeholder initiatives to effectively address intellectual property infringements, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned, including by convening stakeholders consensually and promoting open dialogue and cooperation among the Parties' stakeholders.

2. The Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories.

ARTICLE 10.60

Committee on Intellectual Property Rights

The Committee on Intellectual Property Rights is established pursuant to Article 18.3(1) (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees), without prejudice to Article 10.55(14) (Border measures), the Committee on Intellectual Property Rights shall be responsible for the matters covered in this Chapter.

# CHAPTER 11

# ANTICOMPETITIVE CONDUCT, MERGER CONTROL AND SUBSIDIES

ARTICLE 11.1

Competition principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices have the potential to distort the proper functioning of markets and undermine the benefits of trade and investment liberalisation. The Parties shall apply this Chapter to all enterprises, public or private.

ARTICLE 11.2

Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Chapter.

## SECTION A

## ANTICOMPETITIVE CONDUCT AND MERGER CONTROL

ARTICLE 11.3

Legislative framework

1. Each Party shall adopt or maintain competition law which applies to all enterprises in all sectors of the economy and addresses, in an effective manner, all of the following practices:

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

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

(c) concentrations between enterprises which would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, as specified in their respective law.

ARTICLE 11.4

Implementation

1. Each Party shall maintain an operationally independent authority which is responsible for, and appropriately equipped with the powers and resources necessary to ensure, the full application and the effective enforcement of the competition law referred to in Article 11.3 (Legislative framework).

2. Each Party shall apply its competition law in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.

3. Each Party shall apply its competition law to all enterprises, private or public, engaged in economic activities. This shall not prevent a Party from providing for exemptions from its competition law if such exemptions are transparent and are limited to those necessary to secure public interest.

4. To the extent provided for in the law of a Party, the application of the competition law should not obstruct the performance, in law or in fact, of particular tasks of public interest that may be assigned to enterprises. Exemptions from the competition law of a Party should be transparent, limited to assigned tasks of public interest, proportionate and strictly necessary to achieve the desired public policy objective.

ARTICLE 11.5

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement.

2. To facilitate such cooperation, the Parties' competition authorities may exchange information, subject to the confidentiality rules as foreseen in the Parties' respective laws and regulations.

3. The competition authorities of the Parties shall endeavour to coordinate, to the extent possible and appropriate, their enforcement activities relating to the same or related conduct or transactions.

SECTION B

SUBSIDIES

ARTICLE 11.6

Definition and scope

1. For the purposes of this Section, "subsidy" means a measure that fulfils the conditions set out in paragraph 1.1 of Article 1 of the SCM Agreement, *mutatis mutandis*.

2 This Chapter only applies to a subsidy related to trade in goods.[1]

3. A subsidy is subject to this Section only if it is specific within the meaning of Article 2 of the SCM Agreement.

4. Nothing in this Section shall be construed to apply in a manner that obstructs enterprises from performing activities in pursuance of legitimate public policy objectives or public service tasks.

[1] For trade in services, Article 8.20 (Subsidies) contains provisions on subsidies.

5. Articles 11.9 (Transparency), 11.10 (Consultations), and 11.11 (Use of subsidies) do not apply to subsidies related to trade in goods:

(a) covered by Annex 1 to the Agreement on Agriculture;

(b) produced by fishing activities covered by the WTO Agreement on Fisheries Subsidies (hereinafter referred to as the "Agreement on Fisheries Subsidies"), done at Geneva on 17 June 2022; or

(c) related to aquaculture products.

6. Article 11.10 (Consultations) does not apply to the audio-visual sector.

7. Nothing in this Section shall apply to a subsidy for which the amount of the budgetary outlay over a period of three consecutive years is below 18 million Special Drawing Rights.

ARTICLE 11.7

Principles

1. The Parties recognise that subsidies serve public policy objectives including as a useful tool in implementing economic development objectives. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation under this Agreement.

2. Nothing in this Chapter shall prevent a Party from granting a subsidy temporarily to respond to a national or global economic emergency. Such subsidies shall be transparent and shall not go beyond their objective.

ARTICLE 11.8

Relationship with the WTO

Nothing in this Section shall affect the rights and obligations of either Party under the WTO Agreements, in particular the SCM Agreement, Article XVI of GATT 1994, the Agreement on Agriculture and the Agreement on Fisheries Subsidies, as applicable.

ARTICLE 11.9

Transparency

1. Each Party shall make transparent the following information with respect to a subsidy granted or maintained within its territory:

(a) the legal basis or authority and objective of the subsidy;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

2. A Party shall meet the requirement of paragraph 1 through:

(a) notification under Article 25 of the SCM Agreement, which is provided at least every two years; or

(b) publication by the Party or on its behalf on a publicly accessible website in a timely manner.

3. Notification of a subsidy under this Article shall be without prejudice to its legal status.

ARTICLE 11.10

Consultations

1. If a Party considers that a subsidy granted by the other Party has, or is likely to have, significant negative effects on its trade liberalisation interests under this Agreement, it may express its concerns in writing and request information on the matter. The request shall include an explanation of how the subsidy affects the requesting Party's interests.

2. The requesting Party may seek the following additional information about the subsidy:

(a) the legal basis or authority and objective of the subsidy;

(b) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;

(c) the dates and duration of the subsidy and any other time limits attached to it;

(d) the eligibility requirements of the subsidy;

(e) the total amount or the annual amount budgeted for the subsidy;

(f) if possible, the name of the recipient of the subsidy; and

(g) if possible, other information, including statistical data permitting an assessment of the effects of the subsidy.

3. The requested Party shall endeavour to provide the requested information in writing. If the requested information is not provided by the requested Party within 90 days after the date of receipt of the request, that Party shall explain the absence of such information in its written response.

4. If the requesting Party still considers that the subsidy has significant negative effects on its interests under the Agreement, it may request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held no later than 60 days after the date of receipt of the request for consultations. The responding Party shall accord sympathetic consideration to the matter of the request.

## ARTICLE 11.11

### Use of subsidies

Each Party shall endeavour to ensure that subsidies are used only for the policy objective for which the subsidies were granted.

ARTICLE 11.12

Confidentiality

Any information provided under this Section shall be subject to Article 19.6 (Disclosure of information and treatment of confidential information).

CHAPTER 12

SMALL AND MEDIUM-SIZED ENTERPRISES

ARTICLE 12.1

Objectives

The Parties recognise the importance of SMEs in their bilateral trade and investment relations and affirm their commitment to enhance the ability of SMEs to benefit from this Agreement.

ARTICLE 12.2

Information sharing

1. Each Party shall establish or maintain a publicly accessible website containing information regarding this Agreement, including:

(a) a summary of this Agreement; and

(b) information designed for SMEs that shall contain:

(i) a description of the provisions in this Agreement that each Party considers to be relevant to SMEs of the Parties; and

(ii) any additional information that each Party considers would be useful for SMEs interested in benefitting from this Agreement.

2. Each Party shall include internet links on the website referred to in paragraph 1 to:

(a) the text of this Agreement, including all annexes, tariff schedules, and product-specific rules of origin;

(b) the equivalent website of the other Party; and

(c) the websites of its own authorities that the Party considers would provide useful information to persons interested in trading and doing business in that Party.

3. Each Party shall include internet links on the website referred to in paragraph 1 to websites of its own authorities that include information, as appropriate, related to the following:

(a) regulations and procedures for importation, exportation and transit as well as relevant forms, documents and other information required;

(b) regulations and procedures concerning intellectual property rights, including geographical indications;

(c) technical regulations including, where necessary, mandatory conformity assessment procedures and links to lists of conformity assessment bodies in cases where third party conformity assessment is mandatory, as provided for in Chapter 6 (Technical barriers to trade);

(d) sanitary and phytosanitary measures relating to importation and exportation as provided for in Chapter 5 (Sanitary and phytosanitary measures);

(e) rules on public procurement and a database containing public procurement notices;

(f) company registration procedures;

(g) customs or other fees, including other product specific fees, at the border; fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(h) duty drawback, deferral, or other types of relief that reduce, refund or waive customs duties;

(i) rules for the classification or valuation of products for customs purposes; and

(j) any other information which the Party considers may be of assistance to SMEs.

4. Each Party shall include an internet link on the website referred to in paragraph 1 to a database that is electronically searchable by tariff nomenclature code and that includes, as appropriate, the following information with respect to access to its market:

(a) rates of customs duties and quotas, including most-favoured nation, rates concerning non-most-favoured nation countries and preferential rates and tariff rate quotas;

(b) excise duties;

(c) taxes (value added tax or sales tax);

(d) rules of origin as provided for in Chapter 3 (Rules of origin and origin procedures);

(e) other tariff measures;

(f) information needed for import procedures; and

(g) information related to non-tariff measures or regulations.

5. Each Party shall regularly, or on request of the other Party, update the information and links referred to in paragraphs 1 to 4 that it maintains on its website to ensure they are up-to-date and accurate.

6. Each Party shall ensure that the information set out in this Article is presented in an adequate manner for use by SMEs. Each Party shall endeavour to make the information available in English.

7. A Party shall not apply a fee for access to the information provided pursuant to paragraphs 1 to 4 to a person of either Party.

ARTICLE 12.3

SMEs contact points

1. Each Party shall communicate to the other Party its SMEs contact point that will carry out the functions listed in this Chapter. The Parties shall promptly notify each other of any change to the notified contact details.

2. Each Party recognizes the importance of cooperation between the Parties and may carry out activities to support the objectives of this Chapter by identifying ways to assist their SMEs to take advantage of the opportunities resulting from this Agreement through the promotion of a favourable environment for the development of SMEs and their participation in bilateral trade and investment, and exchanging information and best practices on SMEs-related initiatives.

3. The SMEs contact points shall:

(a) ensure that the needs of SMEs are taken into account in the implementation of this Agreement and that SMEs of both Parties can take advantage of this Agreement;

(b) ensure that the information referred to in Article 12.2 (Information sharing) is regularly updated and relevant for SMEs. Either Party may, through the SMEs contact point, suggest additional information that the other Party may include on its websites to be maintained in accordance with Article 12.2 (Information sharing);

(c) examine any matter relevant to SMEs in connection with the implementation of this Agreement, including:

(i) exchanging information to assist the Joint Committee in its task to monitor and implement the SMEs-related aspects of this Agreement; and

(ii) assisting other specialised committees, contact points, and working groups or bodies established under this Agreement in considering matters of relevance to SMEs;

(d) report periodically on their activities, jointly or individually, to the Joint Committee for its consideration; and

(e) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree.

4. The SMEs contact points shall meet as necessary and shall carry out their work through the communication channels mutually agreed by the Parties, which may include electronic mail, videoconferencing, or other means.

5. The SMEs contact points may seek to collaborate with experts and external organisations, as appropriate, in carrying out their activities.

## ARTICLE 12.4

### Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Chapter.

## CHAPTER 13

## TRANSPARENCY

### ARTICLE 13.1

### Definitions

For the purposes of this Chapter:

(a) "administrative decision" means a decision or action with legal effect that applies to a specific person, good or service in an individual case and covers the failure to take an administrative decision as provided for in the laws and regulations of a Party; and

(b) "measure of general application" means laws, regulations, judicial decisions, procedures and administrative rulings of general application[1] pertaining to any matter covered by this Agreement.

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[1] For greater certainty, "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct relevant to the implementation of this Agreement.

ARTICLE 13.2

Objective

1. Recognising the impact which their respective regulatory environment may have on matters covered by this Agreement, the Parties aim to provide a transparent and predictable regulatory environment and efficient procedures for economic entities, especially for SMEs.

2. The Parties affirm their respective commitments in relation to transparency under the WTO Agreement and build upon those commitments in this Chapter.

ARTICLE 13.3

Publication

In respect of any matter covered by this Agreement, each Party shall ensure that a measure of general application:

(a) is promptly published via an officially designated medium and if feasible, by electronic means, or is otherwise made available in such a manner as to enable any person to become acquainted with it;

(b) to the extent possible, provides an explanation of the objective of the measure, and the rationale for the measure; and

(c) to the extent possible, allows for sufficient time between the publication of laws and regulations and their entry into force; this point does not apply to judicial decisions and administrative rulings.

## ARTICLE 13.4

### Enquiries

1. Each Party shall maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by this Agreement.

2. On request of a Party, the other Party shall, without undue delay, provide information and respond to questions pertaining to any laws or regulations in force with respect to any matter covered by this Agreement and that the requesting Party considers might affect the operation of this Agreement.

3. On request of a Party, the other Party shall, to the extent possible, provide information and respond to questions pertaining to any planned laws or regulations with respect to a matter covered by this Agreement that the requesting Party considers might affect the operation of this Agreement.

## ARTICLE 13.5

### Administration of measures of general application

1. Each Party shall administer in an objective, impartial, and reasonable manner all measures of general application with respect to a matter covered by this Agreement.

2. In applying measures of general application to particular persons, goods or services of the other Party in specific cases, each Party shall:

(a) provide persons who are directly affected by administrative proceedings with reasonable notice, in accordance with its laws and regulations, when proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in controversy; and

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings and the public interest permit.

## ARTICLE 13.6

### Review and appeal

1. Each Party shall establish or maintain judicial, arbitral, quasi-judicial, or administrative tribunals or procedures, as applicable, for the purposes of the prompt review and, where warranted, correction of final administrative decision with respect to a matter covered by this Agreement.

2. Each Party shall ensure that its procedures for appeal or review are carried out in an objective and impartial manner by its tribunals. Such tribunals shall be impartial and independent of the authority entrusted with administrative enforcement and shall not have any material interest in the outcome of the matter.

3. Each Party shall ensure that in respect of tribunals or procedures referred to in paragraph 1, the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

4. The decision referred to in point (b) of paragraph 3 shall be implemented by the authority entrusted with administrative enforcement, subject to appeal or further review as provided for in the law of a Party.

## ARTICLE 13.7

### Relation to other chapters

This Chapter is without prejudice to specific transparency related provisions set out in other Chapters of this Agreement.

ARTICLE 13.8

Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Chapter.

## CHAPTER 14

## GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

ARTICLE 14.1

General principles

1. Each Party is free to determine its approach to good regulatory practices and regulatory cooperation under this Agreement in a manner consistent with its law, political and institutional structures and practices, fundamental principles including the precautionary principle, and public policy objectives underlying its regulatory system.

2. The provisions of this Chapter shall not be construed as requiring a Party to:

(a) deviate from its respective procedures for identifying its regulatory priorities and preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve any particular regulatory outcome.

3. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of:

(a) for the European Union, the Member States; and

(b) for India, states, local governments, and Union Territories.

ARTICLE 14.2

Definitions

For the purposes of this Chapter:

(a) "regulatory authority" means:

(i) for the European Union, the European Commission; and

(ii) for India, a Ministry or Department at the central level of government.

(b) "regulatory measures" means:

(i) for the European Union:

(A) regulations and directives, as provided in Article 288 of the Treaty on the Functioning of the European Union; and

(B) delegated and implementing acts, as provided in Article 290 and Article 291 of the Treaty on the Functioning of the European Union respectively; and

(ii) for India, an Act of the Parliament of India and rules enacted pursuant to such Act.

ARTICLE 14.3

Scope

1. This Chapter applies to regulatory measures as prepared or implemented by regulatory authorities in respect of matters covered by this Agreement, excluding emergency measures.

2. In case of any difference between the provisions of this Chapter and the provisions of another Chapter related to the subject matter of this Chapter, the latter shall prevail to the extent of such difference.

ARTICLE 14.4

Internal coordination of regulatory development

1. Each Party shall maintain processes or mechanisms for internal coordination of its regulatory measures under preparation by its regulatory authorities.

2. Each Party shall endeavour to provide processes or mechanisms that, among other things, seek to:

(a) foster good regulatory practices, including those set forth in this Chapter;

(b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;

(c) ensure compliance with the Party's international trade and investment obligations; and

(d) promote the consideration of the impacts of the regulatory measures under preparation, including the impacts on SMEs.

ARTICLE 14.5

Regulatory processes and mechanisms

Each Party shall make publicly available the descriptions of the existing processes and mechanisms employed by its regulatory authority to prepare, evaluate or review regulatory measures in accordance with its applicable laws and regulations. Those descriptions shall refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

## ARTICLE 14.6

### Early information on planned regulatory measures

1. The regulatory authority of each Party shall endeavour to make publicly available on at least an annual basis a list of planned regulatory measures that are reasonably expected to be adopted within a year.

2. With respect to each major[1] regulatory measure included in the list referred to in paragraph 1, each Party shall endeavour to make publicly available, as early as possible:

(a) a brief description of its scope and objectives; and

(b) if available, the estimated timing for its adoption, including opportunities for public consultations.

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[1] The regulatory authority of each Party determines what constitutes "major" regulatory measures for the purposes of its obligations under this Chapter.

ARTICLE 14.7

Public consultations

1. When preparing a major regulatory measure, each Party shall, to the extent possible, make publicly available either the draft regulatory measure or consultation documents providing sufficient details about the regulatory measure under preparation to allow any person to assess whether and how that person's interests might be significantly affected.

2. Each Party shall endeavour to provide a reasonable opportunity for any person, on a non-discriminatory basis, to provide comments on the publicly available information concerning the proposed measure.

3. Each Party shall endeavour to consider the comments received.

4. The regulatory authority of each Party shall endeavour to make use of electronic means of communication and to make information related to public consultation, including information on how to provide comments freely and publicly available online, preferably on a single electronic portal.

ARTICLE 14.8

Impact assessment

1. The Parties recognise that regulatory impact assessment is beneficial in developing regulatory measures.

2. Each Party shall promote that its regulatory authority, in accordance with the applicable rules and procedures, carries out an impact assessment when proposing major regulatory measures.

3. When carrying out an impact assessment, the regulatory authority of each Party shall promote the consideration of the following factors:

(a) the need for the regulatory measure, including the nature and the significance of the problem the regulatory measure intends to address;

(b) feasible and appropriate regulatory and non-regulatory alternatives (including the option of not regulating), if any, that would achieve the Party's public policy objective;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of those alternatives, including on international trade and investment and on SMEs; and

(d) to the extent possible, relevant international standards, if any.

4. When carrying out an impact assessment, the regulatory authority of each Party shall publish a report of its assessment and its relevant findings.

ARTICLE 14.9

Retrospective evaluation

1. The Parties recognise the positive contribution of periodic retrospective evaluations of existing regulatory measures in reducing unnecessary regulatory burden, including on SMEs, and in achieving public policy objectives more effectively.

2. The Parties shall endeavour to promote the use of periodic retrospective evaluations in their regulatory systems.

ARTICLE 14.10

Regulatory register

1. Each Party shall ensure that regulatory measures that are in effect are published in a designated register that identifies regulatory measures by topic and that is publicly available on a single, freely accessible, and searchable website.

2. Each Party shall periodically update its register.

ARTICLE 14.11

Exchange of information on good regulatory practices

The Parties shall endeavour to exchange information on their good regulatory practices as set out in this Chapter.

ARTICLE 14.12

Regulatory cooperation

1. Each Party, upon request of the other Party, shall give positive consideration to proposals for cooperation in areas of mutual interest to facilitate the implementation of this Chapter in order to maximise the benefits arising from it.

2. Regulatory cooperation activities under this Chapter may include:

(a) information exchanges, dialogues, or meetings with the other Party, including in particular:

(i) exchanging experiences on regulatory impact assessments, retrospective reviews, and any other matter covered by this Chapter; and

(ii) exchanging information on good regulatory practices relating to existing regulatory measures;

(b) workshops, seminars, and other relevant activities; and

(c) other activities that the Parties may agree.

ARTICLE 14.13

Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Chapter.

CHAPTER 15

SUSTAINABLE FOOD SYSTEMS

ARTICLE 15.1

Objective

1. The Parties recognise the importance of the sustainability of the food systems and shall establish cooperation on the transition towards sustainable food systems (hereinafter referred to as "SFS").

2. This Chapter applies without prejudice to the provisions of the other Chapters of this Agreement.

ARTICLE 15.2

Scope

1. This Chapter applies to cooperation in mutually agreed areas with a view to improving the sustainability of the Parties' respective food systems and to promoting trade relations between the Parties.

2. This Chapter includes provisions for cooperation on specific aspects of SFS, as provided in Articles 15.4 (Sustainability of food production, supply, processing, marketing and consumption, and reduction in food loss and waste), 15.5 (Deceptive practices along the agri-food chain), 15.6 (Animal welfare) and 15.7 (Antimicrobial resistance).

ARTICLE 15.3

Definitions

1. A sustainable food system is one that delivers adequate, affordable, safe and nutritious food to meet the needs of the present and future generations with minimal negative impact on the environment, while aiming to enhance benefits for the society and the economy of the Parties.

2. In accordance with the Parties' respective laws, regulations and practices, SFS may include the following important characteristics:

(a) the sustainability of food production;

(b) the sustainability of food supply, including affordable access for consumers;

(c) the sustainability of food processing and marketing;

(d) the sustainability of food consumption; and

(e) the reduction of food loss and waste.

## ARTICLE 15.4

### Sustainability of food production, supply, processing, marketing and consumption, and reduction in food loss and waste

1. Taking into account their priorities and circumstances, the Parties shall endeavour to cooperate with the objective of enhancing the sustainability and resilience of their respective food systems. Such cooperation may also, if agreed, be undertaken at international fora.

2. To achieve the objective established in paragraph 1, the Parties will, among other things, cooperate to promote:

(a) sustainable food production, methods and practices which aim to improve sustainability;

(b) sustainable management of natural resources and address biodiversity loss in the process of food production;

(c) sustainable use of chemical pesticides and fertilizers, by reducing their use and mitigating their harmful effects in the food chain, when appropriate and taking into account the differences in circumstances and agronomic conditions of the Parties;

(d) efforts to accelerate climate adaptation and mitigation in food production;

(e) enhanced resilience of their respective food supply chains;

(f) sustainable food processing and marketing;

(g) consumption of broad varieties of nutritious food and healthy diets;

(h) environment-friendly consumption; and

(i) reduction in food loss and waste taking into consideration the Sustainable Development Goals target 12.3.

3. The cooperation may include research and innovation collaborations, exchange of relevant and available information, expertise and experiences in the above fields.

## ARTICLE 15.5

### Deceptive practices along the agri-food chain

1. For the purposes of this Article, "deceptive practice" means any suspected intentional unfair practice with the aim of gaining undue competitive advantage and misleading customers or consumers.

2. The Parties shall endeavour to cooperate in the fight against deceptive practices in the agri-food chain that are, or appear to be, non-compliant with their laws and regulations, or that pose a risk to health of humans, animals or plants or the environment, or that mislead customers or consumers.

3. The information exchange for cooperation under paragraph 2 will be undertaken by prioritising existing systems and taking advantage of the information already acquired through such systems.

ARTICLE 15.6

Animal welfare

1. The Parties recognise the importance of the well-being of animals in food production system and the connection between improved animal health and the welfare of farmed animals.

2. Based on their respective laws and regulations, the Parties aim to cooperate on animal welfare matters and the promotion of WOAH animal welfare standards. Such cooperation will take into account any possible WTO commitment related to animal welfare that the Parties may take.

ARTICLE 15.7

Antimicrobial resistance

1. The Parties recognise that antimicrobial resistance (hereinafter referred to as "AMR") is a serious problem and a global threat to human and animal health.

2. The Parties acknowledge that the nature of the threat requires a "One Health" approach in line with the Global Action Plan on Antimicrobial Resistance adopted by the 68th World Health Assembly of the World Health Organisation in Geneva on 26 May 2015 (hereinafter referred to as "Global Action Plan"), which the Parties support.

3. The Parties acknowledge that the threat of AMR requires developing and implementing national action plans on AMR in line with the Global Action Plan.

4. Based on their respective laws and regulations, priorities and needs, the Parties aim to cooperate on areas of mutual interest in the fight against AMR and exchange their relevant experiences and expertise with each other on:

(a) promoting the prudent and responsible use of antimicrobials in animal production and veterinary practice; and

(b) phasing out the use of antimicrobials as growth promoters in food-producing animals.

ARTICLE 15.8

The Committee on Sustainable Food Systems

1. The Committee on Sustainable Food Systems (hereinafter referred to as "the SFS Committee") is established pursuant to Article 18.3 (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees), the SFS Committee:

(a) will, in pursuing the objective of this Chapter, establish an action plan to cooperate on the transition towards a sustainable food system; and

(b) shall review the implementation of this Chapter, including the action plan established pursuant to paragraph 5, taking into account the progress achieved.

2. The SFS Committee may recommend the Joint Committee to establish technical working groups consisting of expert-level government representatives of the Parties, which shall identify and address technical and scientific matters covered by this Chapter.

3. When additional expertise is required, the SFS Committee may recommend the Joint Committee to establish *ad hoc* groups, including scientific groups. Membership of such *ad hoc* groups need not be restricted to representatives of the Parties and shall be mutually agreed upon by the Parties. If the Parties fail to reach consensus on the inclusion of an individual expert in the *ad hoc* group, such expert shall not be included.

4. The SFS Committee shall report as needed on its activities to the Joint Committee and refer the matter to the Joint Committee in case of disagreement between the Parties.

## ARTICLE 15.9

### Additional provisions

1. The Parties shall ensure that the activities of the SFS Committee referred to in Article 15.8 (The Committee on Sustainable Food Systems) do not endanger the independence of their respective national or regional agencies. The SFS Committee shall establish rules mitigating potential conflicts of interest for the participants of its meetings and those of any technical working group reporting to it.

2. Nothing in this Chapter shall affect the rights and obligations of each Party to protect confidential information, in accordance with each Party's relevant laws and regulations. Each Party shall ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the process established in this Chapter.

3. Fully respecting the Parties' right to regulate, nothing in this Chapter shall be construed as obliging a Party to:

(a) modify its import requirements;

(b) deviate from domestic procedures for preparing and adopting regulatory measures;

(c) take action that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(d) adopt any particular regulatory or financial provisions.

ARTICLE 15.10

Dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under this Chapter.

CHAPTER 16

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 16.1

Context and objectives

1. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development, adopted at Rio de Janeiro on 14 June 1992, the Plan of Implementation of the World Summit on Sustainable Development, done at Johannesburg on 4 September 2002, the International Labour Organization (hereinafter referred to as "ILO") Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference (hereinafter referred to as "ILC") on 10 June 2008, as amended in 2022 (hereinafter referred to as "ILO Declaration on Social Justice for a Fair Globalization"), the outcome document of the United Nations (hereinafter referred to as "UN") Conference on Sustainable Development entitled "The Future We Want", adopted by the UN General Assembly on 27 July 2012, the outcome document entitled "Transforming our world: the 2030 Agenda for Sustainable Development" and its Sustainable Development Goals, adopted by the UN General Assembly on 25 September 2015 (hereinafter referred to as "2030 Agenda"), and the ILO Centenary Declaration for the Future of Work, adopted by the ILC on 21 June 2019 (hereinafter referred to as " ILO Centenary Declaration for the Future of Work").

2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promote the development of international trade in a way that contributes to the objective of sustainable development.

3. The Parties recognise the urgent threat of, and urgent need to address, climate change, as outlined in the relevant reports of the Intergovernmental Panel on Climate Change ("IPCC"), as a contribution to the economic, social and environmental objectives of sustainable development reflecting the principles of the UN Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as "UNFCCC") and the Paris Agreement, including equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

4. In light of the above, the objective of this Chapter is to enhance the integration of sustainable development, notably its environmental and social dimensions (in particular the labour aspects), in the Parties' trade relationship, including through strengthening dialogue and cooperation. Further, it is not the Parties' intention in this Chapter to harmonise the labour or environment standards of the Parties.

5. Recognising the difference in the levels of development between the Parties, the Parties affirm their commitments on support under the multilateral environmental agreements (hereinafter referred to as "MEAs") to which they are party and agree to cooperate in accordance with Article 16.15 (Cooperation), including, as appropriate, through mobilising financial tools and instruments, promoting voluntary sharing of know-how, technological innovation, technology development, technical assistance and capacity building, in order to support the objectives of this Chapter.

6. For the purposes of this Chapter, for India, "laws and regulations" mean an Act of the Parliament of India or delegated legislation framed pursuant to an Act of the Parliament of India, which is enforceable by action of the Central or Union level of Government.

## ARTICLE 16.2

### Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection, including social protection, it deems appropriate, and to adopt, maintain or modify its relevant law and policies. Such levels, law and policies shall endeavour to be consistent with each Party's commitments to the internationally recognised standards and agreements referred to in this Chapter.

2. Each Party shall strive to ensure that its relevant law and policies provide for, and encourage, as appropriate, high levels of environmental and labour protection, and shall strive to continue to improve such levels, law and policies.

3. A Party shall make efforts towards ensuring that it does not weaken or reduce the levels of protection afforded in its environmental or labour laws and regulations in order to encourage trade or investment between the Parties.

4. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental or labour laws and regulations in a manner that weakens or reduces the protection afforded in those laws and regulations in order to encourage trade or investment between the Parties.

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour laws and regulations in order to encourage trade or investment between the Parties.

6. Recalling Principle 12 of the Rio Declaration on Environment and Development, the Parties should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental and labour purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. The Parties agree to promote their economic relations and the development of trade in a manner that contributes to achieving the Parties' respective Sustainable Development Goals, while taking a cooperative approach recognising their different levels of development as well as common values and interests.

## ARTICLE 16.3

### Multilateral labour standards and agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, as expressed in the ILO Declaration on Social Justice for a Fair Globalization.

2. In accordance with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the ILC on 18 June 1998, as amended in 2022, each Party shall respect, promote and realise, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights at work, as defined in the fundamental ILO Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour[1];

(c) the effective abolition of child labour;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) a safe and healthy working environment.

3. Each Party shall make efforts, in good faith, towards the ratification of the fundamental ILO Conventions to which it is not yet a party, in a promotional, flexible manner and in accordance with the law of each Party, and according to the ILO Declaration on Social Justice for a Fair Globalization and the ILO Centenary Declaration for the Future of Work.

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[1] In this context, the Parties recognise the importance of ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, adopted by the ILC on 11 June 2014.

4. On the request of the other Party, a Party shall provide information, as appropriate and feasible, on its situation regarding the ratification of the ILO Conventions or Protocols classified as up-to-date by the ILO.

5. Each Party shall implement the ILO Conventions that India and the Member States of the European Union have respectively ratified, in good faith, in accordance with the law and procedure of each Party.

6. Recalling the ILO Declaration on Social Justice for a Fair Globalization, the Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage. The Parties also affirm that labour standards should not be used for protectionist trade purposes. In this context, the Parties underline that their respective legitimate comparative advantages should in no way be put into question.

7. Each Party shall promote, through its laws and practices and with due regard to national conditions and circumstances, the ILO Decent Work Agenda as set out in the ILO Declaration on Social Justice for a Fair Globalization (hereinafter referred to as "ILO Decent Work Agenda"), in particular with regard to:

(a) decent working conditions for all, with regard to, among others, wages and earnings, working hours, other conditions of work and social protection; and

(b) social dialogue on labour matters among workers and employers and their respective organisations, and with relevant government authorities.

8. Consistent with its commitments under the ILO, each Party shall maintain an effective labour inspection system.

9. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including in the ILO, among others through the exchange of information, best practices and outreach initiatives. Such cooperation may cover, among others:

(a) implementation of fundamental, priority and other up-to-date ILO Conventions;

(b) decent work, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue and gender equality;

(c) information sharing: exchanging of information and sharing of best practices on issues of common interest, and on relevant events, activities and initiatives organised in their respective territories;

(d) human resources development through skills development, skills intelligence, including skills availabilities and gaps, and qualification frameworks, life-long learning, vocational education and training, also in view of facilitating a just transition and decent work in accordance with the Guidelines for a just transition towards environmentally sustainable economies and societies for all, adopted by the ILO in November 2015, and the ILO Decent Work Agenda;

(e) labour administration and enforcement: institutional capacity of labour administrations and enforcement capacity of quasi-judicial and judicial bodies;

(f) labour relations: forms of cooperation to ensure productive labour relations among workers, employers and governments;

(g) sharing information, in particular as regards employment statistics and the regulation of working conditions with respect to workers employed with digital labour platforms and online employers;

(h) referencing of occupations by skills and qualifications requirements, and promoting transparency in this regard, which may facilitate mutual recognition, as appropriate;

(i) sharing information on the impact of international trade on the labour market, or the impact of labour market on international trade;

(j) promotion of green jobs and green entrepreneurship to support communities affected by the green transition; and

(k) sharing information on matters related to social security, labour conditions and the promotion of decent work for migrant workers, such as on occupational safety and health and on social protection.

ARTICLE 16.4

Trade and gender equality

1. The Parties recognise that inclusive trade policies contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the 2030 Agenda. The Parties acknowledge the important contribution by women to economic growth through their participation in economic activity, including international trade. The Parties agree to promote and enhance gender equality and the empowerment of women in the implementation of this Agreement.

2. The Parties aim to strengthen their trade relations and cooperation in ways that provide for equal opportunities and treatment for women and men to benefit from this Agreement, including in matters of employment and occupation, in accordance with their international commitments.

3. Each Party shall implement, in good faith, in accordance with its law and procedure, its obligations under international agreements addressing gender equality and women's rights to which it is a party, including the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the UN General Assembly on 18 December 1979, noting in particular its provisions related to eliminating discrimination against women in economic life and in the field of employment, as well as the relevant ILO Conventions that it has ratified.

4. Each Party shall strive to ensure that its relevant law and policies provide for, and encourage, equal rights, treatment and opportunities for men and women. Each Party shall strive to improve such law and policies, without prejudice to the right of each Party to establish its own scope and levels of protection for equal opportunities for men and women. Such law and policies shall be consistent with the agreements on gender equality or women's rights that each Party has respectively ratified, and with each Party's commitments to internationally recognised standards.

5. The Parties shall work together bilaterally or in other relevant fora, as appropriate, to strengthen their cooperation on trade-related aspects of gender equality policies and measures, including activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement. Such cooperation may cover, among others, exchange of information and best practices related to trade-related aspects of:

(a) collection of gender-disaggregated data and gender-based analysis of trade policies, giving due consideration to constraints of availability and feasibility;

(b) enhancing women's full, equal and meaningful participation in international trade, business and the workplace, including through measures to support women's entrepreneurship, including for women-led SMEs and agri-businesses;

(c) supporting women-led SMEs, businesses, cooperatives and collectives, and facilitating their access to international networks, markets and value chains;

(d) promoting inclusive economic opportunities for women engaged in trade, including women with disabilities, and women in rural and remote areas;

(e) promoting business development services for women, financial inclusion, education and vocational training for women, as well as promoting access to financial assistance and financing, including export financing, venture capital and microfinance for women-led start-ups and businesses; and

(f) strengthening the engagement of women in digital trade, by bridging the gender digital divide, including through opportunities to strengthen their digital skills.

6. The Parties agree on the importance of monitoring and reviewing, in accordance with the procedures and policies of each Party, the impact of the implementation of this Agreement on gender equality and equal opportunities provided for women in relation to trade.

## ARTICLE 16.5

### Multilateral environmental governance and agreements

1. The Parties recognise the importance of international environmental governance, in particular the role of the UN Environment Assembly (hereinafter referred to as "UNEA") of the UN Environment Programme (hereinafter referred to as "UNEP"), as well as MEAs, as a response of the international community to global or regional environmental challenges and underline the need to promote mutual supportiveness between trade and environment policies, rules and measures.

2. In light of paragraph 1, each Party shall strive to fulfil its obligations, in accordance with national circumstances, under the MEAs and their protocols to which it is a party.

3. On the request of the other Party, a Party shall provide information, as appropriate and feasible, regarding the ratifications of MEAs, including their protocols.

4. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including in the UN High-level Political Forum for Sustainable Development, the UNEP, the UNEA, and with respect to MEAs, including through the exchange of information, best practices and outreach initiatives. Such cooperation may cover, among others:

(a) policies and measures promoting mutual supportiveness of trade and environment including:

   (i) sharing information on policies and practices and promoting initiatives to encourage the shift to a circular economy; and

   (ii) promoting initiatives on sustainable production and consumption, green growth and pollution abatement;

(b) promoting mutual understanding of how trade and environmental priorities interact; and

(c) other trade-related aspects of MEAs, including their protocols and implementation.

ARTICLE 16.6

Trade and climate change

1. The Parties recognise the importance of taking urgent and enhanced action to combat climate change and its impacts, and the role of a supportive and open international economic system in pursuing this objective, which would lead to sustainable economic growth and development in the Parties, consistent with the UNFCCC and with the Paris Agreement. The Parties also recognise the objective of the UNFCCC to tackle climate change through the implementation of the Paris Agreement, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances. Accordingly, each Party shall implement the UNFCCC and the Paris Agreement.

2. In light of paragraph 1, each Party shall endeavour to:

(a) promote mutually supportive trade and climate policies and measures contributing to respective Nationally Determined Contributions and to respective long term strategies for transitions with respect to low greenhouse gas/carbon emissions[1], to a resource-efficient and circular economy, and to climate-resilient development;

(b) facilitate climate change mitigation and adaptation, especially through addressing tariff and non-tariff barriers to trade in renewable energy and energy efficient goods and services, among others, or through the adoption of policy frameworks encouraging the deployment of best available technologies; and

(c) facilitate cooperation as provided in Article 16.15 (Cooperation) on the mobilisation of financial resources with respect to both mitigation and adaption, pursuant to the UNFCCC and the Paris Agreement.

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1 For clarity, the referred strategies currently relate to greenhouse gas emissions for the EU and carbon emissions for India.

3. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives. Such cooperation may cover, among others:

(a) policy dialogue and cooperation on matters regarding the Paris Agreement, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, sustainable transport, sustainable and climate-resilient infrastructure development;

(b) matters related to the International Maritime Organization (hereinafter referred to as " IMO") process on greenhouse gas emissions reduction measures by ships engaged in international trade, while acting in accordance with the guiding principles of the IMO Strategy on Reduction of GHG Emissions from Ships, adopted by the IMO on 13 April 2018, amended on 7 July 2023 (hereinafter referred to as "2023 IMO GHG Strategy"), referred in its paragraph 3.5[1];

[1] The principles guiding the 2023 IMO GHG Strategy include "the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, enshrined in UNFCCC, its Kyoto Protocol and the Paris Agreement".

(c) supporting the phase out of ozone-depleting substances (hereinafter referred to as "ODS"), and the phase-down of hydrofluorocarbons (hereinafter referred to as "HFCs") under the Kigali amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 16 September 1987 (hereinafter referred to as "Montreal Protocol"), such as by controlling their production, consumption and trade, by undertaking further research, design, development and introduction of suitable alternatives to ODS and HFCs, and of technologies with low global warming potential, including sustainable cooling and refrigerant management practices, by sharing experiences on policies and programmes, including lifecycle management of refrigerants, as well as by combatting the illegal trade of substances regulated by the Montreal Protocol, based on the Parties' respective national circumstances; and

(d) enhancing the enabling environments, in accordance with the UNFCCC and the Paris Agreement, to facilitate the development and mobilisation of climate finance, including for strengthening cooperative action on technology development and transfer, and facilitating cooperation as provided for in Article 16.15 (Cooperation) in order to support, as appropriate, the objectives of this Article.

ARTICLE 16.7

Trade and biological diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with relevant MEAs to which they are a party, including the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (hereinafter referred to as "CBD"), and its protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, D.C. on 3 March 1973 (hereinafter referred to as "CITES"), and the decisions adopted thereunder.

2. In light of paragraph 1, each Party shall, in accordance with its law and procedure:

(a) implement appropriate measures to combat illegal wildlife trade, in accordance with CITES; and

(b) take measures to conserve biological diversity, in particular to prevent the spread of invasive alien species by preventing the introduction of, and controlling, those alien species which threaten ecosystems, habitats or species.

3. In light of paragraph 1, each Party shall endeavour to:

(a) promote the long-term conservation and sustainable use of CITES-listed species in accordance with CITES, including cooperating, as appropriate, towards coverage by CITES of animal and plant species, whose conservation status is mutually considered at risk; and

(b) promote the conservation and sustainable use of biological resources, including products derived from such use, in order to contribute to the conservation of biodiversity.

4. The Parties further recognise the importance of prior informed consent or approval to access genetic resources and traditional knowledge associated with genetic resources, and the fair and equitable sharing, between users and providers, of benefits arising from the utilisation of genetic resources and traditional knowledge associated with genetic resources, as well as subsequent application and commercialisation. Accordingly, the Parties affirm their commitment to implement the CBD and its Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilisation, done at Nagoya on 29 October 2010 (hereinafter referred to as "Nagoya Protocol"), in accordance with the law of each Party.

5. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives. Such cooperation may cover, among others:

(a) initiatives and good practices concerning trade in goods and services derived from the sustainable use of biological resources with the aim of conserving biological diversity;

(b) trade and the conservation and sustainable use of biological diversity, including the development and application of natural capital and ecosystem accounting methods, the valuation of ecosystems and their services and related economic instruments;

(c) combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation; and

(d) access, transfer and use of genetic resources, and of traditional knowledge associated to genetic resources, and the fair and equitable sharing of benefits from their utilisation in line with the CBD and its Nagoya Protocol, as well as other international access and benefit-sharing instruments to which the Parties are party.

ARTICLE 16.8

Trade and forests

1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations.

2. Recognising that deforestation is a major driver of global warming and biodiversity loss, each Party shall take appropriate measures to combat illegal logging and related trade, as well as to support the conservation and sustainable management of forests and to address the risk of deforestation or forest degradation.

3. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, among others through the exchange of information, best practices and outreach initiatives. Such areas of cooperation may cover, among others:

(a) combatting illegal logging and associated trade;

(b) promoting the conservation and sustainable management of forests;

(c) reducing deforestation and forest degradation;

(d) exchanging of knowledge and experience on trade-related initiatives regarding forest governance;

(e) reducing biodiversity loss;

(f) promoting circular economy;

(g) increasing mutual knowledge and understanding of existing practices and traceability, certification or other third party verified schemes and standards; and

(h) encouraging sustainable supply chains and production.

ARTICLE 16.9

Trade and sustainable management of marine biological resources and aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives. The Parties acknowledge the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fishers, and the usefulness to encourage responsible fishing practices by such fishers that may enhance trade opportunities for them.

2. The Parties acknowledge that illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing threatens fishery stocks, the livelihoods of persons engaged in responsible fishing practices and the sustainability of trade in fishery products and confirm the need for action to end IUU fishing in order to encourage sustainable utilisation of fisheries resources and their conservation, while recognising the need for capacity building and technical assistance to Parties.

3. In light of paragraphs 1 and 2, each Party shall endeavour to:

(a) implement long-term conservation and management measures and sustainable use of marine living resources as defined in the main UN and Food and Agriculture Organization (hereinafter referred to as "FAO") instruments relating to these issues[1] to which it is a party;

[1] The UNCLOS, the FAO Compliance Agreement, the UN Fish Stocks Agreement, and the FAO PSMA.

(b) act consistently with the principles of the UN Convention on the Law of the Sea, adopted at Montego Bay on 10 December 1982 (hereinafter referred to as "UNCLOS"), the UN Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted at New York on 4 August 1995 (hereinafter referred to as "UN Fish Stocks Agreement"), as well as, if it is a party, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved at Rome on 24 November 1993 (hereinafter referred to as "FAO Compliance Agreement"), the FAO Code of Conduct for Responsible Fisheries, adopted at Rome on 31 October 1995 (hereinafter referred to as "FAO CCRF") and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome on 22 November 2009 (hereinafter referred to as "FAO PSMA"), and to participate in FAO's initiative on the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels;

(c) participate in and contribute to the work of the regional fisheries management organisations (hereinafter referred to as "RFMOs") to which it is a member, observer, or cooperating non-contracting party, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation measures based on best available science, the strengthening of compliance mechanisms, the undertaking of periodic performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management measure, and, where applicable, the adoption and implementation of catch documentation or certification schemes and port state measures;

(d) implement effective measures to combat IUU fishing, including measures to exclude IUU products from trade flows[1], and cooperate to this end; and

(e) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO CCRF.

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1 The European Union recalls that European Union law does not permit the importation of IUU products into the European Union.

4. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives. Such areas of cooperation may cover, among others:

(a) promotion of trade in sustainable fish and fishery products and aquaculture;

(b) development of sustainable practices in deep sea fishing, including in relation to its infrastructure and value chain;

(c) sharing of know-how and expertise in the field of sustainable fisheries management and aquaculture;

(d) capacity building, skilling and training, sharing best practices and success stories in relation to sustainable fishing and aquaculture practices; and

(e) research and development related to sustainable fisheries management and aquaculture.

ARTICLE 16.10

Trade supporting sustainable development

1. The Parties recognise that trade in environmental goods and services, and in goods and services that contribute to enhanced well-being and the creation of decent jobs, may meaningfully contribute to sustainable development. In this context, the Parties recognise the importance of facilitating trade in environmental goods and services, and the role of voluntary sharing of know-how and of technology on mutually agreed terms, and the exchange of expertise, as a means of improving environmental and economic performance and encouraging sustainable development.

2. In light of paragraph 1, each Party shall promote and facilitate trade in environmental goods and services, and in goods and services that contribute to enhanced well-being and the creation of decent jobs, and in goods that are subject to credible sustainability assurance schemes, including by working through the relevant committees established under this Agreement, as appropriate.

3. The promotion and facilitation of trade referred to in paragraph 2 may include:

(a) awareness-raising actions, and information and public education campaigns;

(b) adoption of policy frameworks conducive to the deployment of best available technologies, in accordance with the different national circumstances and capacities of each Party;

(c) encouraging credible sustainability schemes, especially in a manner that takes into account the specific needs and concerns of SMEs in the territory of each Party;

(d) addressing related non-tariff barriers; and

(e) reference to relevant international standards, such as the ILO Conventions and guidelines or MEAs, as appropriate, in line with each Party's international obligations and commitments.

4. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives.

ARTICLE 16.11

Trade and responsible business conduct

1. The Parties recognise the importance of responsible business conduct / corporate social responsibility practices, and the role of trade in pursuing this objective.

2. In light of paragraph 1, each Party shall, in accordance with its procedures:

(a) promote responsible business conduct / corporate social responsibility by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses; and

(b) promote awareness and support the voluntary uptake and dissemination of relevant international instruments such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as well as other similar instruments as each Party may consider appropriate.

3. The Parties recognise the utility of international sector-specific guidelines in the area of responsible business conduct / corporate social responsibility, and shall promote joint work in this regard.

4. The Parties shall work together to strengthen their cooperation, including in accordance with Article 16.15 (Cooperation), on trade-related matters of mutual interest covered by this Article, bilaterally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives.

ARTICLE 16.12

Scientific and technical information

When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations, including its comprehensiveness.

ARTICLE 16.13

Public submissions

1. Each Party shall consider, as appropriate, and endeavour to respond to, submissions made by persons of that Party concerning matters related to this Chapter, in accordance with its procedures, including when identifying areas of cooperation and when carrying out cooperative activities under this Chapter.

2. In the event that the matter raises an issue directly relevant under Article 16.3 (Multilateral labour standards and agreements) and the submission clearly identifies the person making the submission and explains, to the degree possible, how and to what extent the issue raised affects trade between the Parties, the Parties shall consider the submission and provide a timely response, including in writing as appropriate.

ARTICLE 16.14

Committee on Trade and Sustainable Development and contact points

1. The Committee on Trade and Sustainable Development (hereinafter referred to as "the TSD Committee") is established pursuant to Article 18.3 (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees), the TSD Committee shall have the following functions:

(a) facilitate, monitor and review the implementation of this Chapter;

(b) contribute to the work of the Joint Committee on issues covered by this Chapter; and

(c) consider any other matter related to this Chapter as the Parties may agree.

2. Each Party shall, within one month after the date of entry into force of this Agreement, designate a contact point within its administration to facilitate communication and coordination between the Parties on any matter relating to this Chapter. Each Party shall notify the other Party of the contact details of its contact point. The Parties shall promptly notify each other of any change to those contact details.

ARTICLE 16.15

Cooperation

1. The Parties affirm the importance of sharing economic, technical and financial resources as a means to support implementation of the sustainable development objectives under this Chapter.

2. The Parties recognise cooperation as a means to support implementation, to enhance the benefits of this Chapter, to strengthen the Parties' joint and individual capacities to protect the environment, labour rights and gender equality, and to promote sustainable development and clean growth as they strengthen their trade relations.

3. The Parties also agree on the importance of taking into consideration their different levels of development and developmental priorities when determining the cooperation activities under this Chapter, as well as the forms of assistance and support needed for fulfilling the objectives of this Chapter.

4. Cooperation under this Chapter may include among others:

(a) policy dialogues;

(b) technical assistance and capacity building;

(c) mobilising financial tools and instruments, as appropriate;

(d) promoting the voluntary sharing of know-how and technology development, and supporting technological innovation, in particular in line with the Parties' respective commitments under MEAs;

(e) sharing of information, data and best practices on policies and procedures, including through joint analysis and the exchange of experts;

(f) workshops, seminars, conferences, collaborative programmes and projects, including joint research projects on environmental technologies; and

(g) other means, as the Parties may agree.

5. In order to support the cooperation and implementation activities in this Chapter, each Party shall, as appropriate:

(a) share its priorities for cooperation with the other Party;

(b) propose cooperation activities, including those related to the implementation of this Chapter; and

(c) develop and participate in cooperation activities and programmes in accordance with priorities identified and agreed by the Parties.

ARTICLE 16.16

Consultations between the Parties

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.

2. Subject to paragraph 3, a Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the other Party's contact point notified pursuant to Article 16.14(2) (Committee on Trade and Sustainable Development and contact points). The requesting Party shall set out the reasons for the request, including the identification of the measure or other matter at issue and an indication of the factual and legal basis for the request.

3. In the event that the matter arising under this Chapter regards compliance with obligations under an MEA to which the Parties are party, the responding Party may, where appropriate, request to address the matter through the consultative or other procedures under that MEA. The requesting Party shall accordingly seek to address the matter under that MEA, unless the Parties agree otherwise.

4. The responding Party shall respond to the request in writing no later than 50 days after the date of delivery of the request.

5. Unless the Parties agree otherwise, they shall enter into consultations through the TSD Committee promptly and no later than 90 days after the date of delivery of the request.

6. The Parties shall make every effort to arrive at a mutually agreed solution to the matter as soon as is reasonably practicable, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

ARTICLE 16.17

Joint Committee consultations

1. If the Parties have failed to resolve the matter under Article 16.16 (Consultations between the Parties), either Party may request that the Joint Committee meet to consider the matter by submitting a written request to the contact point of the other Party.

2. The Joint Committee shall promptly meet following the submission of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant information from the ILO, relevant organisations or bodies established under MEAs, governmental agencies or sources, or other mutually agreed agencies or sources.

ARTICLE 16.18

Consultations at ministerial level

If the Parties have failed to resolve the matter under Article 16.17 (Joint Committee consultations), either Party may refer the matter to the relevant Minister-level representatives of the Parties who shall seek to promptly resolve the matter.

ARTICLE 16.19

Consultation procedures

1. Consultations pursuant to Article 16.16 (Consultations between the Parties), Article 16.17 (Joint Committee consultations) or Article 16.18 (Consultations at ministerial level) may be held in person or by any technological means available as agreed by the Parties.

2. Consultations pursuant to Article 16.16 (Consultations between the Parties), Article 16.17 (Joint Committee consultations) or Article 16.18 (Consultations at ministerial level) and in particular, the positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.[1]

3. A Party may make public the outcome of consultations pursuant to Article 16.16 (Consultations between the Parties), Article 16.17 (Joint Committee consultations) or Article 16.18 (Consultations at ministerial level), unless the Parties agree otherwise, subject to the protection of confidential information. In the event that the outcome of consultations is published, this shall be through a jointly agreed report.

4. A Party shall treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

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[1] For greater certainty, this paragraph does not prevent the Parties from consulting their relevant stakeholders.

## ARTICLE 16.20

### Review

A Party may request the review of this Chapter at any time after the date of entry into force of this Agreement. Such review shall be initiated by mutual agreement of the Parties. Each Party may, as appropriate, take into account views expressed by its relevant stakeholders in relation to such review. Following such review, the Parties may jointly decide on future action, as appropriate.

# CHAPTER 17

# DISPUTE SETTLEMENT

## ARTICLE 17.1

### Objective

The objective of this Chapter is to provide an effective and efficient mechanism for the avoidance or prompt settlement of any dispute arising between the Parties concerning the interpretation and application of this Agreement, with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 17.2

Scope

1. This Chapter applies to any dispute between the Parties concerning:

(a) the interpretation and application of the covered provisions of this Agreement, when a Party considers that a measure[1] of the other Party is inconsistent with the covered provisions of this Agreement; or

(b) an allegation by a Party that a measure applied by the other Party nullifies or materially impairs any benefit accruing to it under the covered provisions in a manner adversely affecting trade between the Parties, whether or not such measure conflicts with the provisions of this Agreement.

2. The covered provisions shall include all provisions of this Agreement with the exception of:

(a) Section A (Anti-dumping and countervailing measures) and Section B (Global safeguard measures) of Chapter 7 (Trade remedies);

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1 For greater certainty, "measure" includes omissions of a Party to fulfil its obligations under this Agreement.

(b) Article 8.10 (Transparency of measures in the schedule of specific commitments) and Article 8.20 (Subsidies);

(c) Chapter 10 (Intellectual property) for the purposes of point (b) of paragraph 1 of this Article;

(d) Chapter 11 (Anticompetitive conduct, merger control and subsidies);

(e) Chapter 12 (Small and medium-sized enterprises);

(f) Chapter 13 (Transparency);

(g) Chapter 14 (Good regulatory practices and regulatory cooperation);

(h) Chapter 15 (Sustainable food systems); and

(i) Chapter 16 (Trade and sustainable development).

3. This Chapter applies subject to Article 5.12 (Technical consultations) and Article 6.10 (Technical discussions).

ARTICLE 17.3

Definitions

For the purposes of this Chapter and its Annexes:

(a) "ADR provider" means a provider of alternative dispute resolution services, such as good offices, conciliation or mediation, who provides their services pursuant to Article 17.4 (Alternative dispute resolution);

(b) "complaining Party" means the Party that requests consultations pursuant to Article 17.5 (Consultations);

(c) "panellist" means a member of a panel;

(d) "Party complained against" means the Party to which a request for consultations is made pursuant to Article 17.5 (Consultations); and

(e) "perishable goods" means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

ARTICLE 17.4

Alternative dispute resolution

1. Notwithstanding Article 17.2(1) (Scope), the Parties may at any time agree to undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation, with a view to facilitating the finding of a mutually agreed solution to a dispute regarding any measure alleged to adversely affect trade between the Parties.

2. Upon the initiation of an alternative method of dispute resolution, the Parties shall agree on the selection, tasks and powers of the ADR provider and on the rules governing the alternative dispute resolution procedure, including in respect of time periods, termination and costs.

3. If the Parties consider to initiate mediation, they may use the model mediation procedure set out in Annex 17-C (Model Mediation Procedures), with any agreed amendments, or any other mediation rules that may be mutually agreed.

4. Unless the Parties agree otherwise:

(a) procedures undertaken pursuant to paragraph 1 of this Article, and in particular, positions taken by the Parties during these procedures and any advice or proposed solution, shall be confidential and without prejudice to the rights of a Party in any further or other proceedings under this or any other Agreement; and

(b) a Party may only disclose to the public the fact that alternative dispute resolution is taking place.

5. Without prejudice to Section E (Conduct of the mediation procedure) of Annex 17-C (Model Mediation Procedures), or any other procedures agreed by the Parties, a Party may suspend or terminate the procedures undertaken pursuant to paragraph 1 of this Article at any time.

6. If the Parties agree, procedures undertaken pursuant to paragraph 1 may continue during the panel procedures.

ARTICLE 17.5

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 17.2 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution. Each Party shall accord adequate opportunity for such consultations.

2. A Party shall seek consultations by means of a written request delivered to the other Party, identifying the measure at issue and the covered provisions that it considers applicable, and giving an indication of the factual and legal basis for the complaint. A Party shall, in case of a dispute referred to in point (b) of Article 17.2(1) (Scope), also identify the benefits it considers to have been, as a result of the measure at issue, nullified or materially impaired in a manner adversely affecting trade between the Parties.

3. The Party complained against shall reply to the request within 10 days after the date of its delivery. Unless the Parties agree otherwise, consultations shall be held no later than 30 days after the date of delivery of the request and take place in the territory of the Party complained against. The consultations shall be deemed concluded within 45 days after the date of delivery of the request, unless the Parties agree to continue consultations.

4. Consultations on matters which the Party seeking consultations considers to be of urgency, including those regarding perishable goods, seasonal goods, or seasonal services, shall be held within 15 days after the date of delivery of the request. The consultations shall be deemed concluded within those 15 days, unless the Parties agree to continue consultations.

5. During consultations, each Party shall:

(a) provide sufficient factual information so as to allow a full examination of the manner in which the measure at issue could, in the case of a dispute referred to in point (a) of Article 17.2(1) (Scope), be inconsistent with the covered provisions, or, in the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), nullify or materially impair the benefits accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties;

(b) protect as confidential, any information designated as such by a Party, exchanged in the course of the consultations; and

(c) endeavour to make available for the consultations personnel of its governmental authorities who have responsibility for or expertise in the matter subject to the consultations.

6. Consultations, in particular all information disclosed and positions taken by the Parties during consultations, shall be confidential, and are without prejudice to the rights of either Party in any further or other proceedings.

7. A request for consultations concerning a dispute referred to in point (a) of Article 17.2(1) (Scope) shall be without prejudice to the right of the requesting Party to request, concurrently or subsequently, consultations concerning a dispute referred to in point (b) of Article 17.2(1) (Scope) in respect of the same measure, and vice versa.

ARTICLE 17.6

Request for the establishment of a panel

1. The complaining Party may request the establishment of a panel by way of a written notification delivered to the Party complained against if:

(a) the Party complained against does not respond to the request for consultations within 10 days after the date of its delivery;

(b) consultations are not held within the time periods set out in Article 17.5(3) or (4) (Consultations), as applicable;

(c) the Parties agree not to hold consultations; or

(d) consultations have been concluded and have failed to resolve the dispute.

2. The request for the establishment of a panel (hereinafter referred to as "panel request") shall:

(a) state whether consultations have been held;

(b) identify the specific measure at issue; and

(c) set out, in the case of a dispute referred to in point (a) of Article 17.2(1) (Scope), how that measure is inconsistent with the covered provisions in a manner sufficient to present the factual and legal basis for the complaint clearly, or, in the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), how the measure at issue nullifies or materially impairs the benefits accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties.

3. A panel request concerning a dispute referred to in point (a) of Article 17.2(1) (Scope) shall be without prejudice to the right of the complaining Party to request, concurrently or subsequently, the establishment of a panel concerning a dispute referred to in point (b) of Article 17.2(1) (Scope) in respect of the same measure, and vice versa.

ARTICLE 17.7

Establishment and composition of a panel

1. Where a Party makes a panel request pursuant to Article 17.6 (Request for the establishment of a panel), a panel shall be established in accordance with this Article.

2. A panel shall be composed of three panellists.

3. Within 20 days after the date of delivery of the panel request, the Parties shall consult with a view to agreeing on the composition of the panel.

4. If the Parties do not agree on the composition of the panel within the time period set out in paragraph 3, each Party shall, within 10 days after the expiry of that time period, select a panellist from the sub-list of that Party established pursuant to Article 17.8 (Lists of panellists). If a Party does not select a panellist from its sub-list within that time period, the complaining Party shall, within 10 days after the expiry of that time period, select by lot the panellist from the sub-list of that Party.

5. If the Parties do not agree on the chairperson of the panel within the time period set out in paragraph 3, the complaining Party shall, within 10 days after the expiry of that time period, select by lot the chairperson of the panel from the sub-list of chairpersons established pursuant to Article 17.8 (Lists of panellists).

6. If a panellist is selected by lot, pursuant to paragraph 4 or 5, the complaining Party shall promptly inform the Party complained against of the date, time and any other relevant modalities for the selection by lot. The Party complained against may, if it so chooses, be present during that selection. The selection shall be carried out with the Party or Parties that are present.

7. The panel shall be deemed to be established 15 days after the last of the three selected panellists has accepted the appointment in accordance with Rule 4(3) (Appointment of panellists) of Annex 17-A (Rules of Procedure for dispute settlement), unless the Parties agree otherwise.

8. If an individual selected to serve as a panellist is not available or does not accept their appointment, a new individual shall be selected in accordance with the same selection method.

9. If a list provided for in Article 17.8(1) (List of panellists) has not been established or a sub-list does not contain any available individual, at the time a selection by lot is to be made pursuant to paragraphs 4 or 5, the selection shall be done in accordance with Rule 4(1) (Appointment of panellists) of Annex 17-A (Rules of Procedure for dispute settlement) within 10 days after the expiry of the time period set out in paragraph 3 or after the confirmation that no individual is available, as the case may be.

10. If a case is referred to the original panel pursuant to Articles 17.17 (Compliance review), 17.18 (Compensation and suspension of concessions or other obligations) and 17.19 (Review of any compliance measure taken after the adoption of temporary remedies) or to the chairperson pursuant to Article 17.16 (Reasonable period of time), and one or more panellists of the original panel are not available, they shall be replaced by a new panellist selected in accordance with this Article and Annex 17-A (Rules of Procedure for dispute settlement).

ARTICLE 17.8

Lists of panellists

1. The Joint Committee shall, no later than nine months after the date of entry into force of this Agreement, adopt a decision establishing a list of at least 15 individuals who are willing and able to serve as panellists.

2. The list referred to in paragraph 1 shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by India; and

(c) one sub-list of individuals who are not nationals of either Party and who may serve as chairperson to a panel.

3. Each sub-list shall include at least five individuals. The Joint Committee shall ensure that each sub-list always includes this minimum number of individuals.

4. Subject to the agreement of the Parties, the Joint Committee may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists may be used to compose the panel in accordance with the procedure set out in Article 17.7 (Establishment and composition of a panel).

ARTICLE 17.9

Requirements for panellists

1. Each panellist shall:

(a) have demonstrated expertise or experience in law[1], international trade, and other matters covered by this Agreement;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

[1] For greater certainty, expertise in law does not require a panellist to have a formal degree in law.

(d) comply with the Code of Conduct, set out in Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers).

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements set out in point (a) of paragraph 1.

4. Unless the Parties agree otherwise, an ADR provider shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement concerning the same matter for which they have been an ADR provider.

ARTICLE 17.10

Functions of the panel

1. The panel shall make an objective assessment of the matter before it in accordance with the terms of reference.

2. The panel shall set out in its decisions and reports:

(a) a descriptive section summarising the submissions and arguments of the Parties;

(b) its findings and conclusions, including the findings of fact, and:

   (i) in the case of a dispute referred to in point (a) of Article 17.2(1) (Scope), the applicability of the covered provisions, and where applicable, the consistency of the measure at issue with those provisions; or

   (ii) in the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), the existence of a nullification or material impairment of any benefit accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties;

(c) the basic rationale behind any findings and conclusions that it makes; and

(d) any other findings that have been jointly requested by the Parties no later than at the time of the hearing.

3. In the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), unless the Parties agree otherwise, the panel shall:

(a) determine if the measure at issue nullifies or materially impairs any benefit accruing to the complaining Party under the covered provisions, in a manner adversely affecting trade between the Parties;

(b) if applicable, determine the level of benefits accruing to the complaining Party under the covered provisions which have been nullified or materially impaired in a manner adversely affecting trade between the Parties;

(c) if it has found that the measure at issue nullifies or materially impairs any benefit accruing to the complaining Party under the covered provisions, in a manner adversely affecting trade between the Parties, recommend that the Party complained against make a mutually satisfactory adjustment;[1] and

(d) if applicable, and if so requested by both Parties, suggest ways and means of reaching a mutually satisfactory adjustment, including by means of compensation[2].

4. The panel shall not provide its recommendations or suggestions on the means to resolve the dispute, unless jointly requested by the Parties.

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[1] For greater certainty, the Party complained against is not obliged to withdraw the measure at issue.

[2] For greater certainty, such suggestions shall not be binding on the Parties.

5. The panel should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 17.11

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the panel shall have the following terms of reference:

"to examine, in the light of the relevant provisions of the Agreement cited by the Parties, the matter referred to in the panel request, to make findings and draw conclusions on the applicability of the covered provisions and the consistency of the measure at issue with those provisions, or in the case of a panel request pursuant to point (b) of Article 17.2(1) (Scope), on whether the measure in question nullifies or materially impairs any benefit accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties, as the case may be, and to deliver a report in accordance with Articles 17.13 (Interim report) and 17.14 (Final report)".

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 17.12

Decision on urgency

A Party may, within three days after the date of establishment of the panel, request the panel to decide whether the dispute concerns a matter of urgency. The panel shall deliver its decision within 12 days after the date of its establishment.

ARTICLE 17.13

Interim report

1. The panel shall deliver an interim report to the Parties within 150 days after the date of establishment of the panel. If the panel considers, in exceptional cases, that this deadline cannot be met, the chairperson of the panel shall promptly notify the Parties, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall deliver its interim report no later than 180 days after the date of establishment of the panel. In cases of urgency, the panel shall deliver an interim report within 90 days after the date of establishment of the panel.

2. The interim report shall include a descriptive section and the panel's findings and conclusions.

3. A Party may request the panel to review precise aspects of the interim report, providing its comments on those precise aspects, within 15 days after the date of its delivery, and within eight days in cases of urgency. A Party may comment on the other Party's request within seven days after the date of delivery of that request, and within five days in cases of urgency. After considering each Party's comments and making any further examination it considers appropriate in response thereto, the panel may modify its report.

## ARTICLE 17.14

### Final report

1. The panel shall deliver a final report to the Parties within 45 days after the date of issuance of its interim report, and within 30 days in cases of urgency.

2. The final report shall include a discussion of any request by a Party on the interim report as referred to in Article 17.13(3) (Interim report), and clearly address the comments of the Parties.

ARTICLE 17.15

Implementation of the final report

1. If the panel concludes that the measure at issue is inconsistent with the covered provisions, the Party complained against shall take any measure necessary to promptly bring itself into compliance ("compliance measure").

2. If the panel concludes that the measure at issue nullifies or materially impairs any benefit accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties, the Parties shall engage in consultations with the purpose of agreeing a mutually satisfactory adjustment or a mutually agreed solution ("compliance measure"). The Parties shall endeavour to give preference to a solution which effectively expands market access equivalent to the level of nullification or material impairment caused by means of measures including the reduction of tariffs or the elimination of non-tariff barriers.

3. The Party complained against shall, no later than 30 days after the date of delivery of the final report, notify the complaining Party of the compliance measures it has taken or its intentions with respect to compliance.

ARTICLE 17.16

Reasonable period of time

1. If immediate compliance with the obligations pursuant to Article 17.15(1) (Implementation of the final report) is not possible, the Party complained against shall, no later than 30 days after the date of delivery of the final report, notify the complaining Party of the reasonable period of time it will require for compliance and the reasons for it. The Parties shall endeavour to agree on the reasonable period of time.

2. If the Parties have not agreed on the reasonable period of time within 50 days after the date the final panel report is delivered to the Parties, the complaining Party may request the chairperson of the original panel to determine the length of the reasonable period of time. If the complaining Party has not made such a[1]

3. The Party complained against shall notify the complaining Party of its progress in complying with the final report no later than 15 days before the date of expiry of the reasonable period of time.

4. As a guideline, the reasonable period of time should not exceed 15 months from the date of delivery of the final panel report to the Parties. The Parties may agree to extend the reasonable period of time.

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[1] References to the panel in other Articles of this Chapter, in particular in Articles 17.10 (Functions of the panel), 17.11 (Terms of reference), 17.20 (Replacement of panellists), 17.22 (Suspension and termination), 17.23 (Right to seek information), 17.24 (Rules of interpretation), 17.25 (Reports and decisions of the panel), 17.28 (Mutually agreed solution), 17.29 (Time periods) and 17.30 (Expenses), shall also apply to the chairperson, when carrying out the functions pursuant to this Article, *mutatis mutandis*.

ARTICLE 17.17

Compliance review

1. The Party complained against shall, no later than at the date of expiry of the reasonable period of time, notify the complaining Party of any compliance measure it has taken.

2. If the Parties disagree on the existence of any compliance measure or its consistency with the covered provisions, the complaining Party may request the original panel to decide on the matter. The request shall identify the measure at issue and explain how that measure is inconsistent with the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. The compliance panel shall deliver an interim compliance report to the Parties within 60 days after the date of delivery of the request and shall deliver its final report to the Parties within 30 days thereafter.

ARTICLE 17.18

Compensation and suspension of concessions or other obligations

1. Compensation and suspension of concessions or other obligations (hereinafter referred to as "suspension of obligations") are temporary measures available if the Party complained against does not comply with the final report. However, neither compensation nor suspension of obligations is preferred to full compliance with the final report.

2. The Party complained against shall, on request of the complaining Party, present an offer for compensation and enter into negotiations with a view to agreeing on a mutually acceptable compensation if:

(a) the Party complained against notifies the complaining Party that it is not possible to comply with the final report;

(b) the Party complained against fails to notify any compliance measure within the time limit set out in Article 17.15(3) (Implementation of the final report) or before the expiry of the reasonable period of time as determined pursuant to Article 17.16 (Reasonable Period of time);

(c) the panel finds, after a compliance review pursuant to Article 17.17 (Compliance review), that no compliance measure exists; or

(d) the panel finds, after a compliance review pursuant to Article 17.17 (Compliance review), that the measure taken is inconsistent with the covered provisions.

3. The complaining Party may, after mandatory notification of its intentions to the Party complained against, and in accordance with paragraph 4 or 5, suspend obligations under the covered provisions:

(a) under any of the circumstances referred to in points (a) to (d) of paragraph 2, if the complaining Party has not made a request for compensation pursuant to paragraph 2;

(b) if the complaining Party has made a request for compensation pursuant to paragraph 2 and the Parties have not agreed on compensation within 30 days after the date of delivery of the request; or

(c) if the Parties have agreed on a mutually acceptable compensation pursuant to paragraph 2 but the Party complained against has failed to observe the terms of the agreement.

4. The notification referred to in paragraph 3 shall specify:

(a) the level of the intended suspension of obligations;

(b) the relevant sector or sectors to which the concessions or other obligations relate; and

(c) in the case of a dispute referred to in point (a) of Article 17.2(1) (Scope), the reasons on which the complaining Party's decision to suspend concessions or other obligations in a different sector than the sector in which the panel has found an inconsistency with the Agreement, is based.

5. In the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), if the complaining Party considers that suspension of concessions within the same sector or sectors as that or those adversely affected by the measure at issue is not practicable or effective, it may seek to apply this to other sectors. In such case, the complaining Party shall take into account:

(a) the trade in the sector adversely affected by the measure at issue and the importance of such trade to that Party;

(b) the broader economic elements related to the nullification or material impairment; and

(c) the broader economic consequences of the application of the suspension of concessions, including spreading the adoption of temporary remedies across multiple sectors in order to account for the different economic sizes of the sectors involved.

6. The complaining Party may suspend obligations at the earliest 30 days after the date of delivery of the notification referred to in paragraph 3. If the Party complained against makes a request pursuant to paragraph 9, the complaining Party may suspend obligations only after the panel has delivered its decision on that request, and consistent with that decision.

7. The level of suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the measure found to be inconsistent with the covered provisions of this Agreement.

8. In the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), the complaining Party shall continue to accord to the Party complained against, in the sector which is subject to the remedies in question, treatment that is meaningfully more favourable than the treatment it accords under the non-preferential regime at the relevant time. In particular, when a temporary remedy is adopted through the suspension of tariff concessions, the complaining Party shall prioritise goods that are subject to full tariff liberalisation and any temporary remedies shall not exceed 50 % of the difference between, on the one hand, the rate set out in Annex 2-A (Schedules of tariff commitments) applicable at the relevant time and, on the other hand, the suspending Party's applied non-preferential tariff rate.

9. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused as a result of the failure of the Party complained against to comply with the final report, considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 2, or claims that the complaining Party has failed to provide reasons as required in point (c) of paragraph 4, it may, no later than 30 days after the date of delivery of the notification referred to in paragraph 3, request the original panel to make findings on the matter.

10. The panel referred to in paragraph 9 shall deliver its decision on the matter to the Parties normally within 45 days after the date of the request. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall deliver its final report no later than 60 days after the date of the request.

11. The suspension of obligations or the compensation shall be temporary measures and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 17.28 (Mutually agreed solution);

(b) the Parties have agreed that the compliance measure brings the Party complained against into compliance with the covered provisions;

(c) in the case of a dispute referred to in point (a) of Article 17.2(1) (Scope), any compliance measure which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into compliance with those provisions; or

(d) in the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), any measure which the panel has found to nullify or materially impair a benefit accruing to the complaining Party under the covered provisions in a manner adversely affecting trade between the Parties, has been withdrawn or amended so as to eliminate that nullification or material impairment.

12. Notwithstanding paragraph 2, in the case of a dispute referred to in point (b) of Article 17.2(1) (Scope), compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

## ARTICLE 17.19

### Review of any compliance measure taken after the adoption of temporary remedies

1. The Party complained against shall notify the complaining Party of any compliance measure it has taken after the suspension of obligations or the application of temporary compensation, as the case may be. With the exception of cases pursuant to paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the date of delivery of the notification, and, in cases where compensation has been applied, the Party complained against may terminate any compensation applied.

2. If the Parties do not reach agreement on whether the notified measure brings the Party complained against into compliance within 30 days after the date of delivery of the notification pursuant to paragraph 1, either Party may request the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 60 days after the date of delivery of the request. If the panel finds that the compliance measure brings the Party complained against into compliance, the complaining Party shall promptly, and no later than 30 days after the date of delivery of the decision, terminate the suspension of obligations, and the Party complained against may terminate any compensation. Where relevant, the level of suspension of obligations or of compensation shall be adjusted in light of the panel decision.

3. If the Party complained against considers that the level of suspension implemented by the complaining Party exceeds the level equivalent to the nullification or impairment, it may request the original panel to decide on the matter.

ARTICLE 17.20

Replacement of panellists

If, during any dispute settlement procedure under this Chapter, a panellist resigns, is unable to act or needs to be replaced because the panellist does not comply with the requirements for panellists set out in Article 17.9 (Requirements for panellists), a successor panellist shall be appointed in accordance with Article 17.7 (Establishment and composition of a panel) and Annex 17-A (Rules of Procedure for dispute settlement) and they shall have the same powers and duties as the original panellist. The work of the panel, including any relevant time periods, shall be suspended from the date on which the original panellist became unable to act or needed to be replaced until the date of appointment of the new panellist.

ARTICLE 17.21

Rules of Procedure

Consultations and panel procedures under this Chapter shall be governed by this Chapter and Annex 17-A (Rules of Procedure for dispute settlement).

ARTICLE 17.22

Suspension and termination

1. On request of the complaining Party, the panel may suspend its work at any time for a period not exceeding 12 consecutive months. In such a case, the panel shall resume its work at the expiry of the suspension period on request of the complaining Party or before the expiry of the suspension period on request of both Parties.

2. On request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. In such a case, the panel shall resume its work at the expiry of the suspension period on request of the complaining Party or before the expiry of the suspension period on request of both Parties. The panel may resume its work at the expiry of the suspension period on request of the Party complained against.

3. The requesting Party shall deliver a notification to the panel and the other Party accordingly. If the panel does not resume its work at the expiry of the suspension period in accordance with paragraphs 1 or 2, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

4. If the work of the panel is suspended, the relevant time periods set out in this Chapter shall be extended by the same time period for which the work of the panel was suspended.

5. The panel shall terminate its proceedings if the Parties request it to do so.

ARTICLE 17.23

Right to seek information

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. On request of a Party or on its own initiative, the panel may seek any information or technical advice it deems appropriate from any relevant source, after consulting the Parties. The panel also has the right to seek the opinion of experts, as it deems appropriate, after consulting the Parties, and subject to any terms and conditions agreed by the Parties, where applicable.

3. Any information, technical advice or expert opinion obtained by the panel pursuant to this Article shall be made available to the Parties and the Parties may provide comments thereon. Where the panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

ARTICLE 17.24

Rules of interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.

2. The panel shall take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

ARTICLE 17.25

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If the panel is unable to reach a consensus, it shall decide by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Rule 11(3) (Confidentiality) of Annex 17-A (Rules of Procedure for dispute settlement).

3. Reports and decisions of the panel cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

4. With the exception of the interim report, all reports and decisions of the panel shall be binding on the Parties and shall be accepted unconditionally by the Parties.

ARTICLE 17.26

Choice of forum

1. If a dispute arises regarding a right or obligation under this Agreement and a substantially equivalent right or obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress may select the forum in which to settle the dispute.

2. Once the Party seeking redress has selected the forum, the forum selected shall be used to the exclusion of other fora,[1] unless the forum selected first fails to make findings on the issues in dispute for procedural or jurisdictional reasons.

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[1] For greater certainty, the selection of a forum entails the obligation to stop any consultations in other fora.

3. For the purposes of this Article, a forum is deemed to be selected:

(a) for dispute settlement procedures under this Section, by a Party's panel request in accordance with Article 17.6(2) (Request for the establishment of a panel);

(b) for dispute settlement procedures under the WTO Agreement, by a Party's request for the establishment of a panel pursuant to Article 6 of the DSU; and

(c) for dispute settlement procedures under any other agreement referred to in paragraph 1, in accordance with the relevant provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing a suspension of concessions or other obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which both Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Chapter.

ARTICLE 17.27

Transparency

1. Each Party shall have the right to promptly make public:

(a) a request for consultations pursuant to Article 17.5(2) (Consultations);

(b) a panel request pursuant to Article 17.6(2) (Request for the establishment of a panel);

(c) the date of establishment of a panel in accordance with Article 17.7(7) (Establishment and composition of a panel);

(d) its submissions and statements in the panel procedure[1];

(e) the fact that a mutually agreed solution pursuant to Article 17.28 (Mutually agreed solution) has been reached; and

(f) the final reports and decisions of the panel.

1 For greater certainty, this right does not extend to disclosure of the entirety of another Party's written submission and statements made in the panel procedure.

2. Unless the Parties agree otherwise, hearings of the panel shall be open to the public.

3. Paragraphs 1 and 2 shall be subject to the protection of confidential information as set out in Rule 11 (Confidentiality) of Annex 17-A (Rules of Procedure for dispute settlement).

ARTICLE 17.28

Mutually agreed solution

1. The Parties may reach a mutually agreed solution with respect to any dispute referred to in Article 17.2 (Scope) at any time.

2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the panel. Upon such notification, the panel procedure shall be terminated.

3. Each Party shall take any measure necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure it has taken to implement the mutually agreed solution.

ARTICLE 17.29

Time periods

1. All time periods set out in this Chapter shall be counted in days from the day following the act to which they refer, unless otherwise specified.

2. The panel may at any time propose to the Parties to modify any time period set out in this Chapter, stating the reasons for the proposal.

3. Any time period set out in this Chapter may be modified by mutual agreement of the Parties.

ARTICLE 17.30

Expenses

1. Each Party shall bear its own expenses derived from the participation in the panel procedure.

2. Unless otherwise provided, the Parties shall be jointly liable for the expenses for organisational matters, including the remuneration and expenses of the panellists, and share them equally.

3. The Joint Committee may adopt a decision setting out the parameters or other details for the remuneration and the reimbursement of expenses of panellists, including any related costs that could be incurred in the panel procedure. Pending that decision, such remuneration and reimbursement parameters shall be determined in accordance with Rule 4(3) (Appointment of panellists) of Annex 17-A (Rules of Procedure for dispute settlement).

## CHAPTER 18

## INSTITUTIONAL PROVISIONS

### ARTICLE 18.1

### Joint Committee

1. The Parties hereby establish a Joint Committee composed of representatives of both Parties.

2. The Joint Committee shall meet no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Committee shall meet once a year, unless otherwise agreed by the Parties, on a date and with an agenda agreed in advance by the Parties. On request of a Party, the Parties may decide by mutual agreement to hold a special meeting of the Joint Committee at a mutually convenient date without undue delay.

3. The meetings of the Joint Committee shall take place in the European Union or in India alternately, unless otherwise agreed by the Parties. The Joint Committee may meet in person or by other appropriate means of communication, as agreed by the Parties.

4. The Joint Committee shall be co-chaired by the Member of the European Commission responsible for Trade and the Minister of Commerce and Industry of the Government of India, or their respective designees.

5. The work of the Joint Committee shall be governed by the Rules of Procedure set out in Annex 18-A (Rules of Procedure of the Joint Committee).

ARTICLE 18.2

Functions of the Joint Committee

1. The Joint Committee shall:

(a) ensure the proper and effective functioning of this Agreement;

(b) consider ways to further enhance trade and investment between the Parties, including with regard to market access;

(c) assess, review, and monitor the implementation and overall operation of this Agreement and its effects;

(d) supervise and coordinate the work of all specialised committees and, as appropriate, any other bodies established under this Agreement;

(e) without prejudice to Chapter 17 (Dispute settlement) seek to prevent or resolve issues that may arise in areas covered by this Agreement, or to amicably resolve disputes that may arise regarding the interpretation or application of this Agreement;

(f) consider any proposal for amendments to this Agreement; and

(g) consider any other matter of interest relating to an area covered by this Agreement, as the representatives of the Parties may agree.

2. The Joint Committee may:

(a) establish, reorganise, or dissolve specialised committees or other bodies, other than those established pursuant to Article 18.3 (Specialised committees), and determine their composition, function and tasks in order to improve the functioning of this Agreement;

(b) allocate responsibilities or delegate functions to specialised committees or other bodies under this Agreement;

(c) pursuant to point (f) of paragraph 1, recommend to the Parties any amendments to this Agreement;

(d) adopt decisions to amend[1]:

(i) Annex 2-A (Schedules of tariff commitments) and Annex 2-B (Steel tariff rate quotas);

[1] For greater certainty, for India, the adoption of decisions to amend requires prior completion of its domestic legal requirements.

(ii) Chapter 3 (Rules of origin and origin procedures), Annex 3-A (Introductory notes to product-specific rules of origin), Annex 3-B (Product-specific rules of origin), Annex 3-C (Template of the Statement on Origin), Annex 3-D (Authentication procedure for Statement on Origin), Annex 3-E (Certification of origin), Annex 3-F (Joint declaration concerning the Principality of Andorra) and Annex 3-G (Joint declaration concerning the Republic of San Marino);

(iii) Annex 17-A (Rules of Procedure for dispute settlement);

(iv) Annex 17-B (Code of Conduct for panellist and alternative dispute resolution providers);

(v) Annex 17-C (Model mediation procedures); and

(vi) Annex 18-A (Rules of Procedure of the Joint Committee).

(e) consider, and where appropriate, adopt decisions that issue interpretations of the provisions of this Agreement, which shall be binding on the Parties as well as the panels referred to in Chapter 17 (Dispute settlement);

(f) adopt decisions where provided for in this Agreement;

(g) make appropriate recommendations in respect of all matters covered by this Agreement;

(h) discuss and consider proposals for future cooperation activities, including for facilitating the monitoring and evaluation of this Agreement; and

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

## ARTICLE 18.3

### Specialised committees

1. The following specialised committees are hereby established under the auspices of the Joint Committee:

(a) the Committee on Trade in Goods;

(b) the Committee on Customs and Rules of Origin;

(c) the Committee on Sanitary and Phytosanitary Measures;

(d) the Committee on Technical Barriers to Trade;

(e) the Committee on Trade in Services and Digital Trade;

(f) the Committee on Intellectual Property Rights;

(g) the Committee on Sustainable Food Systems; and

(h) the Committee on Trade and Sustainable Development.

2. Unless otherwise provided for in this Agreement or agreed by the Parties, the specialised committees shall meet once a year, on a date and with an agenda agreed in advance by the representatives of the Parties. Special meetings may be convened by mutual agreement, at the request of either Party or of the Joint Committee.

3. The meetings of the specialised committees shall take place in the European Union or in India alternately, unless otherwise agreed by the Parties. The specialised committees may meet in person or by other appropriate means of communication, as agreed by the Parties.

4. The specialised committees shall be co-chaired, at an appropriate level, by representatives of the Parties.

5. Each specialised committee shall adopt its own rules of procedure no later than at its first meeting after the entry into force of this Agreement.[1] Pending the adoption of such rules of procedure, the Rules of Procedure of the Joint Committee set out in Annex 18-A (Rules of Procedure of the Joint Committee) shall apply, *mutatis mutandis*.

6. Each Party shall ensure that when a specialised committee meets, all the competent authorities for each issue on the agenda are represented, as each Party deems appropriate, and that each issue can be discussed at the adequate level of expertise. Each Party shall be responsible for the composition of its own delegation.

ARTICLE 18.4

Functions of the specialised committees

1. With respect to issues pertaining to Chapters for which they are responsible, and in addition to the specific functions set out in the relevant Chapters of this Agreement, the specialised committees shall:

(a) monitor and review their implementation and ensure their proper functioning;

[1] For greater certainty, the power to adopt the rules of procedure includes the power to adopt any subsequent amendments to them.

(b) assist the Joint Committee in the performance of its tasks, in particular by reporting to the Joint Committee and carrying out any task assigned to them by the Joint Committee;

(c) conduct the preparatory technical work necessary to support the functions of the Joint Committee, including for the adoption of decisions or recommendations by the Joint Committee;

(d) provide a forum for the Parties to exchange information, discuss best practices and share implementation experience;

(e) inform the Joint Committee of the date and agenda of their meetings sufficiently in advance; and

(f) report to the Joint Committee on the results and conclusions of each of their meetings.

2. With respect to issues pertaining to Chapters for which they are responsible, and in addition to the specific functions set out in the relevant Chapters of this Agreement, the specialised committees may:

(a) discuss technical issues, without prejudice to Chapter 17 (Dispute settlement); and

(b) adopt decisions where provided for in this Agreement, or make recommendations.

ARTICLE 18.5

Decisions and recommendations of the Joint Committee and specialised committees

1. Decisions and recommendations shall be adopted by mutual agreement.

2. Decisions of the Joint Committee shall be binding on the Parties and the panels referred to in Chapter 17 (Dispute settlement). Decisions of specialised committees pertaining to Chapters for which they are responsible shall be binding on the Parties.

3. Recommendations shall have no binding force.

ARTICLE 18.6

Participation of stakeholders

Each Party shall promote the participation of relevant non-governmental stakeholders in the implementation of this Agreement, in particular through engagement with their respective domestic consultative mechanisms referred to in Article 18.7 (Domestic consultative mechanism).

ARTICLE 18.7

Domestic consultative mechanism

1. Each Party shall create a new or designate an existing domestic consultative mechanism to advise that Party on issues covered by this Agreement within a year after the date of entry into force of this Agreement. Each Party shall facilitate adequate and balanced representation of relevant non-governmental stakeholders on matters covered by this Agreement. The domestic consultative mechanism may be convened in different configurations to discuss the implementation of different Chapters and provisions of this Agreement.

2. Each Party shall regularly, and normally at least once a year, meet with its domestic consultative mechanism, which may provide views concerning the implementation of this Agreement to that Party.

3. Each Party shall make publicly available information on its domestic consultative mechanism and designate a contact point to facilitate stakeholder engagement.

ARTICLE 18.8

Rapid reaction mechanism

1. In respect of the areas covered by this Agreement, the Parties hereby establish a dedicated and expedited mechanism to:

(a) address questions or concerns arising from measures of general application that create or threaten to create significant disruption or impediment to trade between the Parties;

(b) address and seek to resolve questions or concerns on future or planned regulatory initiatives or developments in a Party that create or threaten to create a significant disruption or impediment to trade between the Parties; or

(c) discuss major implementation issues related to this Agreement that have a significant effect on bilateral trade between the Parties.

2. The Parties recognise the need to avoid duplication of processes under this Agreement. To this end, a Party may resort to this mechanism if the matter is urgent or is not satisfactorily addressed through the regular work of the specialised committees established under this Agreement.

3. In the situations envisaged in paragraph 1, a Party may address a request to the other Party, through its contact point, to convene an urgent meeting of the relevant specialised committee. Such request shall include sufficient details of the measure, regulatory initiative or implementation issue, the actual or expected impact on trade and the specific questions or concerns to be discussed. If the request is beyond the domain of the concerned specialised committee, each Party shall ensure an adequate level of expertise.

4. The requested Party shall reply no later than 10 days after the date of receipt of the request referred to in paragraph 3 with a view to agreeing on the date and format of a meeting of the relevant specialised committee. The meeting shall be held no later than 45 days after the date of the requested Party's reply or at such other date as mutually agreed.

5. The relevant specialised committee shall consider the matter based on the information exchanged between the Parties. Following the consideration of the matter, it shall send a detailed report which may include findings and recommendations, including any proposed action, to the Joint Committee no later than 30 days after the date of the meeting.

6. If, after the relevant specialised committee has sent its report to the Joint Committee pursuant to paragraph 5, a Party considers that the matter requires further consideration, it may request the Joint Committee composed of the designees referred to in Article 18.1(4) (Joint Committee) to consider the matter. The Joint Committee shall meet no later than 30 days after the date of receipt of such request or at such other date as mutually agreed to consider the report and to take any action in the exercise of its functions that may be agreed by the Parties.

7. If no mutually agreed solution is found at the meeting of the Joint Committee referred to in paragraph 6, on request of a Party, the Joint Committee at the Ministerial level referred to in Article 18.1(4) (Joint Committee) shall meet to review the matter no later than 45 days after the date of the meeting referred to in paragraph 6 or at such other date as mutually agreed.

8. If the Joint Committee at the Ministerial level reaches an understanding on the steps to be taken on the matter, the Party concerned shall, within 60 days, inform the other Party of the intended follow up.

9. This Article is without prejudice to the rights or obligations of a Party under Chapter 17 (Dispute settlement).

ARTICLE 18.9

Contact points

No later than 60 days after the date of entry into force of this Agreement, each Party shall designate a contact point to facilitate communication between the Parties on matters covered by this Agreement and shall notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change to those contact details.

## CHAPTER 19

## GENERAL PROVISIONS AND EXCEPTIONS

ARTICLE 19.1

Current account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, done at Bretton Woods on 22 July 1944 (hereafter referred to as "Agreement of the International Monetary Fund"), any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.[1]

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[1] For greater certainty, with respect to Chapter 8 (Trade in services), Article 19.1 (Current account) applies only to payments and transfers with respect to transactions on the current account of the balance of payments which relate to the specific commitments a Party has made under that Chapter.

ARTICLE 19.2

Capital movements

Without prejudice to other provisions of this Agreement, for the purposes of Chapter 8 (Trade in services), and to the extent of the specific market access commitments undertaken therein, each Party shall allow the movement of capital with regard to transactions on the capital and financial account of the balance of payments.

ARTICLE 19.3

Measures affecting capital movements, payments or transfers

Nothing in Article 19.1 (Current account) and Article 19.2 (Capital movements) shall be construed as preventing a Party from applying in an equitable and non-discriminatory manner and not in a manner that would constitute a disguised restriction on payments, transfers or capital movement, its laws and regulations relating to:

(a) bankruptcy, insolvency, bank recovery and resolution or the protection of the rights of creditors;

(b) issuing, trading or dealing in financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices and the recovery of the proceeds of crime;

(e) compliance with orders, judgments, decisions or awards in judicial, quasi-judicial, administrative or arbitral proceedings;

(f) social security, public retirement or compulsory savings schemes; or

(g) taxation.

ARTICLE 19.4

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union or for the operation of India’s monetary and exchange rate policy, or threat thereof, the Party concerned may adopt or maintain safeguard measures with regard to capital movements, payments or transfers until a period of normalcy is restored.

2. The measures referred to in paragraph 1 shall be limited to the extent that is strictly necessary.

ARTICLE 19.5

Restrictions in case of balance-of-payments and external difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.[1]

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[1] For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

2. The measures referred to in paragraph 1 shall:

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

(b) not exceed those necessary to deal with the circumstances described in paragraph 1;

(c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;

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

(e) be non-discriminatory compared to third countries in like situations.

3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or its balance of payments. Those measures shall be in accordance with GATT 1994 and the Understanding on the Balance-of-Payments provisions of GATT 1994.

4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATS.

5. A Party maintaining or having adopted measures referred to in paragraph 1 shall promptly notify them to the other Party.

6. To the extent that it does not duplicate the process under the WTO or the International Monetary Fund, the Party adopting or maintaining any restrictions under paragraph 1 shall, on the request of the other Party, promptly commence consultations with the other Party in the Committee on Trade in Goods or Committee on Trade in Services and Digital Trade, as appropriate, from the date of notification in order to review the measures adopted or maintained by it.

## ARTICLE 19.6

### Disclosure of information and treatment of confidential information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would:

(a) impede law enforcement;

(b) otherwise be contrary to the public interest;

(c) be prohibited under its laws and regulations; or

(d) prejudice the legitimate commercial interests of particular enterprises, public or private;

except where a panel requests such confidential information in dispute settlement proceedings under Chapter 17 (Dispute settlement). If such information is provided, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits to the other Party, the Joint Committee or specialised committees information considered confidential under its laws and regulations, and designated as such, the other Party shall treat that information as confidential.

3. Confidential information provided pursuant to this Agreement shall be used only for the purposes for which it was provided.[1]

4. Notwithstanding paragraphs 2 and 3, confidential information provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party providing the information.

[1] For greater certainty, this also includes judicial or quasi-judicial proceedings relating to the purpose for which the information was provided.

ARTICLE 19.7

General exceptions

1. For the purposes of Chapter 2 (Trade in goods), Chapter 3 (Rules of origin and origin procedures), Chapter 4 (Customs and trade facilitation), Chapter 5 (Sanitary and phytosanitary measures), Chapter 6 (Technical barriers to trade), Chapter 9 (Digital trade) and Article 19.1 (Current account), Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in Chapter 8 (Trade in services), Chapter 9 (Digital trade), Article 19.1 (Current account) and Article 19.2 (Capital movements) shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security[1] or public morals, or to maintain public order[2];

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[1] For greater certainty, for the purposes of Chapter 8 (Trade in services), Chapter 9 (Digital trade), Article 19.1 (Current account) and Article 19.2 (Capital movements), public security may cover measures to protect critical public infrastructure, whether publicly or privately owned, relating to communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

[2] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

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

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

    (iii) safety.

(d) inconsistent with Article 8.5 (National treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective[1] imposition or collection of direct taxes in respect of services or service suppliers of the other Party;

(e) inconsistent with Article 8.6 (Most-favoured-nation treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Parties are bound.

[1] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:
(a) 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
(b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
(c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(d) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
(e) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in point (d) of Article 19.7(2) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

ARTICLE 19.8

Security exceptions

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to 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 production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, 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; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 19.9

Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either India or the European Union or its Member States, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. Article 8.6 (Most-favoured-nation treatment) does not apply to an advantage accorded by a Party pursuant to a tax convention.

CHAPTER 20

FINAL PROVISIONS

ARTICLE 20.1

Annexes, Appendices and footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts thereof.

ARTICLE 20.2

Private rights

1. Nothing in this Agreement shall be construed as directly conferring rights or imposing obligations on any persons other than the Parties, or as allowing this Agreement to be directly invoked in a Party's legal system.

2. A Party shall not provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 20.3

Fulfilment of obligations

1. Each Party shall take the measures required to fulfil its obligations under this Agreement so as to ensure that the objectives set out in this Agreement are attained.

2. The Parties recall the obligations set out in Article 1(1) of the Cooperation Agreement between the European Community and the Republic of India on partnership and development, done at Brussels on 20 December 1993. These obligations constitute essential elements of this Agreement.

ARTICLE 20.4

General review

1. The Joint Committee shall undertake a general review of this Agreement, with a view to furthering its objectives, within five years of the date of entry into force of this Agreement and thereafter every five years, or at such times as may be agreed by the Parties.

2. A review pursuant to paragraph 1 shall take into account:

(a) the objective of further liberalising market access conditions;

(b) that mutually beneficial outcomes flow from the implementation and overall operation of this Agreement;

(c) the work of relevant specialised committees or other bodies established under this Agreement, including reviews under relevant Chapters; and

(d) any other matters as may be agreed by the Parties.

ARTICLE 20.5

Amendments

1. The Parties may amend this Agreement by written agreement.

2. Amendments referred to in paragraph 1 shall enter into force in accordance with Article 20.6 (Entry into force), *mutatis mutandis*.

3. Notwithstanding paragraphs 1 and 2 of this Article, the Joint Committee may adopt decisions to amend this Agreement as provided for in point (d) of Article 18.2(2) (Functions of the Joint Committee). The decision of the Joint Committee shall specify the date of entry into force of the amendments.

ARTICLE 20.6

Entry into force

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have exchanged written notifications confirming that they have completed their respective internal legal procedures necessary for that purpose. The Parties may agree on another date of entry into force of this Agreement.

2. The notifications referred to in paragraph 1 shall be sent, for the European Union, to the Secretary-General of the Council of the European Union and, for India, to the Secretary to the Government of India, Department of Commerce, Ministry of Commerce and Industry.

## ARTICLE 20.7

### Future accessions to the European Union

1. The European Union shall notify India of any request for accession of a third country to the European Union.

2. During the negotiations between the European Union and a third country referred to in paragraph 1, the European Union shall:

(a) on request of India and, to the extent possible, provide any information regarding any matter covered by this Agreement; and

(b) take into account any concerns expressed by India.

3. The European Union shall notify India of the date of the signature and of the entry into force of any agreement concerning the accession of a third country to the European Union.

4. The Joint Committee shall examine any effects of accession of a third country to the European Union on this Agreement sufficiently in advance of the date of such accession.

5. To the extent necessary, the Parties shall, before the date of entry into force of the agreement on the accession of a third country to the European Union:

(a) amend this Agreement in accordance with Article 20.5 (Amendments); or

(b) put in place by decision of the Joint Committee any other necessary adjustments or transitional arrangements regarding this Agreement.

ARTICLE 20.8

Termination

1. This Agreement shall remain in force for an indefinite period, unless terminated by a Party.

2. A Party may notify the other Party of its intention to terminate this Agreement. The notification shall be sent, for the European Union, to the Secretary-General of the Council of the European Union and, for India, to the Secretary to the Government of India, Department of Commerce, Ministry of Commerce and Industry. The termination shall take effect six months after the date of delivery of the notification, unless the Parties agree otherwise.

## ARTICLE 20.9

### Authentic texts

This Agreement is drawn in duplicate and is authentic in the language in which it was negotiated.