FREE TRADE AGREEMENT BETWEEN THE SOCIALIST REPUBLIC OF VIET NAM, OF THE ONE PART, AND THE EURASIAN ECONOMIC UNION AND ITS MEMBER STATES, OF THE OTHER PART

PREAMBLE

The Socialist Republic of Viet Nam (hereinafter referred to as "Viet Nam"), of the one part, and the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation (hereinafter referred to as "the Member States of the Eurasian Economic Union"), and the Eurasian Economic Union, of the other part:

RECOGNISING the importance of enhancing their longstanding and strong friendship and the traditional multi-faceted cooperation between the Parties;

DESIRING to create favourable conditions for the development and diversification of trade between them and for the promotion of commercial and economic cooperation in areas of common interest on the basis of equality, mutual benefit, non-discrimination and international law;

REAFFIRMING their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other existing international agreements to which the Parties are party;

RECOGNISING the need to uphold the principles and practices which promote free and unhindered trade in a stable, transparent and non-discriminatory manner;

CONVINCED that this Agreement will enhance the competitiveness of the economies of the Parties in global markets and create conditions encouraging economic, trade and investment relations between them;

BEING CONSCIOUS of the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and ensure predictability;

EMPHASISING the complementarities of the economies of the Parties and the significant potential to advance economic relations by further developing the framework for trade and investment;

ACKNOWLEDGING the important role and contribution of investments in enhancing trade and cooperation between the Parties and the need to further promote and facilitate cooperation and greater business opportunities provided by this Agreement;

REAFFIRMING the importance of ongoing economic cooperation initiatives between the Parties, and agreeing to further develop the existing economic partnership in areas where the Parties have mutual interests;

DESIRING to eliminate barriers to trade and investment between the Parties, lower business costs and enhance economic efficiency; and

CONVINCED that joint efforts between the Parties towards an advanced free trade agreement will develop an enhanced framework for the promotion and development of economic and trade relations between Viet Nam and the Member States of the Eurasian Economic Union in their common interest and for their mutual benefit;

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

ARTICLE 1.1

General Provisions and Definitions

For the purposes of this Agreement, unless otherwise specified:

a) **"central customs authority"** means the highest authorised customs authority of Viet Nam or each of the Member States of the Eurasian Economic Union exercising, in accordance with the respective domestic laws and regulations, the functions of implementing the relevant government policies, regulations, control and supervision in the customs sphere;

b) **"customs authorities"** means the customs authority or customs authorities of Viet Nam or the Member States of the Eurasian Economic Union;

c) **"customs duty"** means any duty or charge of any kind imposed on or in connection with the importation of a good, but does not include any:

   i. charge equivalent to an internal tax imposed consistently with Article III.2 of GATT 1994;

   ii. fee or other charge in connection with the importation commensurate with the cost of services rendered; and

   iii. duty imposed consistently with Chapter 3 (Trade Remedies) of this Agreement;

d) **"days"** means calendar days including weekends and holidays;

e) **"declarant"** means a person who declares goods for customs purposes or on whose behalf the goods are declared;

f) **"Eurasian Economic Commission"** means the permanent regulatory body of the Eurasian Economic Union in accordance with the Treaty on the Eurasian Economic Union of 29 May 2014 (hereinafter referred to as "the Treaty on the EAEU");

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

h) **"GATT 1994"** means the General Agreement on Tariffs and Trade 1994 and its interpretative notes, in Annex 1A to the WTO Agreement;

i) **"good"** means any merchandise, product, article or material;

j) **"Harmonized System"** or **"HS"** means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding System, done on 14 June 1983 as adopted and implemented by the Parties in their respective laws and regulations;

k) **"laws and regulations"** includes any law or any other legal normative act;

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

m) **"originating"** means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin) of this Agreement;

n) **"Parties"** means Viet Nam, of the one part, and the Member States of the Eurasian Economic Union and the Eurasian Economic Union acting jointly or individually within their respective areas of competence as derived from the Treaty on the EAEU, of the other part;

o) **"person"** means a natural person or a juridical person;

p) **"SCM Agreement"** means the Agreement on Subsidies and Countervailing Measures, in Annex 1A to the WTO Agreement;

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

r) **"TBT Agreement"** means the Agreement on Technical Barriers to Trade, in Annex 1A to the WTO Agreement;

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

t) **"WTO"** means the World Trade Organization established in accordance with the WTO Agreement; and

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

ARTICLE 1.2

Establishment of Free Trade Area

The Parties hereby establish a Free Trade Area consistent with Article XXIV of GATT 1994 and Article V of GATS.

ARTICLE 1.3

Objectives

The objectives of this Agreement are:

a) to liberalise and facilitate trade in goods between the Parties through, *inter alia*, reduction of tariff and non-tariff barriers and simplification of customs formalities;

b) to liberalise and facilitate trade in services between the Parties;

c) to facilitate, promote and enhance investment opportunities between the Parties through further development of favourable investment environments;

d) to support economic and trade cooperation between the Parties;

e) to protect adequately and effectively intellectual property and promote cooperation in the field thereof; and

f) to establish a framework to enhance closer cooperation in the fields agreed in this Agreement and facilitate communications between the Parties.

ARTICLE 1.4

Joint Committee

The Parties hereby establish a Joint Committee comprising representatives of each Party, which shall be co-chaired by two representatives – one from Viet Nam and the other from the Eurasian Economic Union or from a Member State of the Eurasian Economic Union. The Parties shall be represented by senior officials delegated by them for this purpose.

ARTICLE 1.5

Functions of the Joint Committee

1. The Joint Committee shall have the following functions:

a) considering any matter related to the implementation and operation of this Agreement;

b) supervising the work of all committees and other bodies established under this Agreement;

c) considering ways to further enhance trade relations between the Parties;

d) considering and recommending to the Parties any amendment to this Agreement; and

e) taking other actions on any matter covered by this Agreement as the Parties may agree.

2. In the fulfilment of its functions, the Joint Committee may establish subsidiary bodies, including *ad hoc* bodies, and assign them with tasks on specific matters. The Joint Committee may, if necessary, decide to seek advice of third persons or groups.

3. Unless the Parties agree otherwise, the Joint Committee shall convene:

a) in regular session every year, with such sessions to be held alternately in the territories of the Parties; and

b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as the Parties may agree.

4. The Joint Committee shall meet within 30 days of a Party giving an advance notice in accordance with Article 15.3 of this Agreement in order to discuss the implications of that action for the Parties and for any arrangement made under this Agreement.

5. All decisions of the Joint Committee, committees and other bodies established under this Agreement shall be taken by consensus of the Parties.

ARTICLE 1.6

Priority Investment Projects

1. Priority investment projects shall be approved by the Government of Viet Nam on the one side and the respective Governments of the Member States of the Eurasian Economic Union on the other side.

2. Notwithstanding other provisions of this Agreement and as a result of consultations of the Parties aimed at support of priority investment projects, the Parties shall be entitled to provide additional preferences. Such decisions shall be made by the relevant authorities of the respective Parties within their competence.

ARTICLE 1.7

Contact Points

1. Each Party shall designate a contact point or contact points to facilitate communications between the Parties on any matter covered by this Agreement and shall notify the Joint Committee of its contact point or contact points.

2. Upon request of a Party, the other Party's contact point or contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

ARTICLE 1.8

Confidential Information

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

2. Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or

otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 1.9

General and Security Exceptions

1. Article XX of GATT 1994 and Article XIV of GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. Article XXI of GATT 1994 and Article XIV *bis* of GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

3. The Joint Committee shall be informed to the fullest extent possible of measures taken under paragraph 2 of this Article and of their termination.

ARTICLE 1.10

Dual Use Goods and Services

The Parties recognise the sovereign right of Viet Nam and the Member States of the Eurasian Economic Union to regulate trade in dual use goods and services subject to their respective export control laws and regulations as well as international obligations.

ARTICLE 1.11

Measures to Safeguard the Balance of Payments

Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.

ARTICLE 1.12

Relation to Other International Agreements

1. This Agreement shall apply without prejudice to the rights and obligations of the Parties arising from bilateral and multilateral agreements to which the Parties are party, including the WTO Agreement and the Parties' respective WTO obligations and commitments.

2. Without prejudice to Article 4.7 of this Agreement, the provisions of this Agreement shall neither apply between the Member States of the Eurasian Economic Union or between the Member States of the Eurasian Economic Union and the Eurasian Economic Union, nor shall they grant Viet Nam the rights and privileges that the Member States of the Eurasian Economic Union grant exclusively to each other.

ARTICLE 1.13

Transparency

1. Each Party shall ensure, in accordance with its respective laws and regulations, that its laws and regulations of general application as well as its respective international agreements, with respect to any matter covered by this Agreement, are promptly published or otherwise made publicly available, including wherever possible in electronic form.

2. To the extent possible, in accordance with its respective laws and regulations, each Party shall:

    a) publish in advance such laws and regulations referred to in paragraph 1 of this Article that it proposes to adopt; and

    b) provide interested persons and the other Party with a reasonable opportunity to comment on such laws and regulations referred to in paragraph 1 of this Article that it proposes to adopt.

3. Upon request of a Party, the other Party shall promptly respond to specific questions and provide information on the laws and regulations referred to in paragraph 1 of this Article.

CHAPTER 2
TRADE IN GOODS

ARTICLE 2.1

Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III of GATT 1994, any advantage, favour, privilege or immunity granted by a Party to any good originating in or destined for the territory of any third country shall be accorded immediately and unconditionally to the like good of the other Party or like good destined for the territory of such Party.

2. Nothing in paragraph 1 of this Article obliges a Party to provide the other Party with an advantage, favour, privilege or immunity on a most-favoured-nation basis which the former Party provides to any other third country fulfilling any of the following criteria:

    a) to adjacent countries for the purposes of facilitating frontier traffic;

    b) to the participants of a customs union, free trade area or regional economic organisation, or any other regional trade agreements as defined in Article XXIV of GATT 1994; or

    c) to developing and least developed countries in accordance with GATT 1994, Generalized System of Preferences under United Nations Conference on Trade and Development or the respective laws and regulations of the Parties.

ARTICLE 2.2

National Treatment

Article III of GATT 1994 and the interpretative notes to this Article are incorporated into and form part of this Agreement, *mutatis mutandis*.

ARTICLE 2.3

Reduction and/or Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall progressively reduce and/or eliminate customs duties on originating goods of the other Party in accordance with its schedule of tariff commitments in Annex 1 to this Agreement and shall not increase any customs duty or adopt any new customs duty resulting in the customs duty rate for originating goods of the other Party exceeding the level specified in its schedule of tariff commitments in Annex 1 to this Agreement.

2. A Party may, at any time, unilaterally accelerate the reduction and/or elimination of customs duties on originating goods of the other Party set out in its schedule of tariff commitments in Annex 1 to this Agreement. This shall not preclude either Party from raising a customs duty to the level established in its schedule of tariff commitments in Annex 1 to this Agreement for the respective year following a unilateral reduction. A Party considering such raise, reduction and/or elimination of a customs duty shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

3. The Parties may consider accelerating the reduction and/or elimination of customs duties set out in their schedules of tariff commitments in Annex 1 to this Agreement by amending this Agreement in accordance with Article 15.5 of this Agreement.

4. If the rate of customs duty on an originating good of a Party applied in accordance with Annex 1 to this Agreement is higher than the most-favoured-nation applied rate of customs duty on the same good, such good shall be eligible for the latter one.

ARTICLE 2.4

Changes to HS Code and Description

1. Each Party shall ensure that any change to its HS code and description shall be carried out without impairing tariff concessions undertaken in accordance with Annex 1 to this Agreement.

2. Such change to Viet Nam HS code and description and the Eurasian Economic Union HS code and description shall be carried out by Viet Nam and the Eurasian Economic Commission, respectively. The Parties shall make any change to their HS code and description publicly available in a timely manner and inform each other every three months.

ARTICLE 2.5

Fees, Charges and Formalities Connected with Importation and Exportation

1. Article VIII of GATT 1994 and the interpretative notes to this Article are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. Each Party shall ensure that its competent authorities make available through their official websites information about fees and charges it imposes.

ARTICLE 2.6

Administration of Trade Regulations

Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings of general application pertaining to trade in goods between the Parties in accordance with Article X of GATT 1994.

ARTICLE 2.7

Subsidies

1. The rights and obligations of the Parties in respect of subsidies for goods not covered by the Agreement on Agriculture, in Annex 1A to the WTO Agreement, shall be governed by the provisions of Article XVI of GATT 1994, the SCM Agreement and their respective WTO obligations and commitments.

2. The Parties share the objective of multilateral elimination of export subsidies for agricultural goods.

3. The rights and obligations of the Parties in respect of export subsidies on any agricultural good destined for the territory of the other Party shall be governed by their respective WTO obligations and commitments.

4. Each Party shall ensure transparency in the area of subsidies covered by this Article. Upon request of a Party, the other Party within a reasonable period of time shall give notice on a specific subsidy, as defined in the SCM Agreement, that it grants or maintains. Such notice shall contain the information set out in Article 25.3 of the SCM Agreement.

ARTICLE 2.8

Import Licensing

1. Each Party shall ensure that its import licensing procedures, as defined in Articles 1 through 3 of the Agreement on Import Licensing Procedures, in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Import Licensing Procedures"), are implemented in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures.

2. Each Party shall publish its rules and information concerning licensing procedures in a manner consistent with Article 1.4 of the Agreement on Import Licensing Procedures. A Party which introduces licensing procedures or changes in these procedures shall notify the other Party of such licensing procedures or changes in these procedures within 60 days of publication. Such notification shall contain information set out in Articles 5.2 and 5.3 of the Agreement on Import Licensing Procedures. The information shall be provided through a contact point of each Party designated for this purpose.

ARTICLE 2.9

Quantitative Restrictions

1. Neither Party may adopt or maintain any quantitative restriction, including prohibition or restriction on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO obligations and commitments, and to this end Articles XI and XIII of GATT 1994 and the interpretative notes to these Articles are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. Each Party shall ensure the transparency of any quantitative restriction permitted in accordance with paragraph 1 of this Article and shall ensure that any such measure is not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

ARTICLE 2.10

Trigger Safeguard Measures

1. The Eurasian Economic Union may apply a trigger safeguard measure to originating goods of Viet Nam listed in Annex 2 to this Agreement and imported into the territories of the Member States of the Eurasian Economic Union if the volume of imports during any calendar year exceeds the relevant trigger level for that year specified in Annex 2 to this Agreement.

2. A trigger safeguard measure shall be applied in the form of a customs duty equal to the most-favoured-nation rate of customs duty applied with respect to the goods concerned on the date when the trigger safeguard measure comes into effect.

3. A trigger safeguard measure shall be applied for a period of time not exceeding six months.

4. Notwithstanding paragraph 3 of this Article, if on the date of the application of the trigger safeguard measure the volume of imports concerned exceeds 150 percent of the relevant trigger level, the period of application of such measure may be extended by another three months.

5. The Eurasian Economic Commission shall publish the data on the volume of imports concerned in a readily accessible manner for Viet Nam. Upon finding that the conditions referred to in paragraph 1 of this Article are met, the Eurasian Economic Commission shall immediately give notice thereof in writing. The Eurasian Economic Commission shall also give notice in writing at least 20 days before taking decision on the application of a trigger safeguard measure, as well as three days after taking such decision, provided that such decision comes into effect not earlier than 30 days from the date the decision is taken, without prejudice to the right of the Eurasian Economic Union to apply such measure. If the Eurasian Economic Union decides not to apply the trigger safeguard measure it shall promptly notify Viet Nam of its decision in writing.

6. Upon request of a Party, the other Party shall promptly enter into consultations and/or provide the requested information with the aim of clarifying the conditions of imposition and application of a trigger safeguard measure under paragraphs 1 through 4 of this Article.

7. Every three years from the date of entry into force of this Agreement, the Parties shall review the operation of this Article and, if necessary, jointly decide to amend this Article as well as Annex 2 to this Agreement in accordance with Article 15.5 of this Agreement.

ARTICLE 2.11

State Trading Enterprises

Each Party shall ensure that its state trading enterprises operate in consistence with Article XVII of GATT 1994 and its WTO obligations and commitments.

ARTICLE 2.12

Committee on Trade in Goods

1. The Parties hereby establish the Committee on Trade in Goods (hereinafter referred to as "the Goods Committee"), comprising representatives of each Party.

2. The Goods Committee shall meet upon request of either Party to consider any matter arising under this Chapter and under Chapters 3 (Trade Remedies), 4 (Rules of Origin), 5 (Customs Administration and Trade Facilitation), 6 (Technical Barriers to Trade) and 7 (Sanitary and Phytosanitary Measures).

3. The Goods Committee shall have the following functions:

    a) reviewing and monitoring the implementation and operation of the Chapters referred to in paragraph 2 of this Article;

    b) reviewing and making appropriate recommendations, as needed, to the Joint Committee on any amendment to the provisions of this Chapter and to the schedules of tariff commitments in Annex 1 to this Agreement in order to promote and facilitate improved market access;

    c) identifying and recommending measures to resolve any problem that may arise;

    d) reporting the findings on any other issue arising from the implementation of this Chapter to the Joint Committee.

CHAPTER 3
TRADE REMEDIES

ARTICLE 3.1

Countervailing Measures

1. The Parties shall apply countervailing measures in accordance with the provisions of Articles VI and XVI of GATT 1994 and the SCM Agreement.

2. For the purposes of conducting countervailing investigations and applying countervailing measures by Viet Nam, the Member States of the Eurasian Economic Union shall be considered individually and not as the Eurasian Economic Union as a whole, unless there are subsidies within the meaning of Article XVI of GATT 1994 and the SCM Agreement available at the level of the Eurasian Economic Union for all Member States of the Eurasian Economic Union.

ARTICLE 3.2

Anti-Dumping Measures

1. The Parties shall apply anti-dumping measures in accordance with the provisions of Article VI of GATT 1994 and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement.

2. For the purposes of conducting anti-dumping investigations and applying anti-dumping measures by Viet Nam, the Member States of the Eurasian Economic Union shall be considered individually and not as the Eurasian Economic Union as a whole, unless both Parties agree otherwise.

ARTICLE 3.3

Global Safeguard Measures

The Parties shall apply global safeguard measures in accordance with the provisions of Article XIX of GATT 1994 and the Agreement on Safeguards, in Annex 1A to the WTO Agreement.

ARTICLE 3.4

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any originating good of 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 as to constitute a substantial cause of serious injury or threat thereof to the domestic industry producing like or directly competitive goods in the territory of the importing Party, the importing Party may apply a bilateral safeguard measure during the transition period for that good to the extent necessary to remedy or prevent the serious injury or threat thereof, subject to the provisions of this Article.

2. A bilateral safeguard measure shall only be applied upon demonstrating clear evidence that increased imports constitute a substantial cause of or are threatening to cause serious injury.

3. The Party intending to apply a bilateral safeguard measure under this Article shall promptly, and in any case before applying a measure, notify the other Party and the Joint Committee. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the good concerned and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure if relevant.

4. The Party that may be affected by the measure shall be offered compensation in the form of substantially equivalent trade liberalisation in relation to the

imports from such Party. The Party shall, within 30 days from the date of notification referred to in paragraph 3 of this Article, examine the information provided in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may apply a bilateral safeguard measure to resolve the problem, and, in the absence of mutually agreed compensation, the Party against whose good the bilateral safeguard measure is applied may take compensatory action. The bilateral safeguard measure and the compensatory action shall be promptly notified to the other Party. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects and/or concessions substantially equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. Compensatory action shall be taken only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure under paragraph 5 of this Article is being applied.

5. If the conditions set out in paragraph 1 of this Article are met, the importing Party may apply a bilateral safeguard measure in the form of:

    a) suspension of further reduction of any applicable rate of customs duty provided for in this Agreement for the good concerned; or

    b) increase of the applicable rate of customs duty for the good concerned to a necessary level not exceeding the base rate indicated in Annex 1 to this Agreement.

6. The Parties may apply a bilateral safeguard measure for the following periods of time:

    a) in the case of a good for which the customs duty reaches the final reduction rate within three years from the date of entry into force of this Agreement, a Party may apply a bilateral safeguard measure for a period of time not exceeding two years. A Party shall not apply a bilateral safeguard measure again on the same good during the one-year period after the expiration of the previous bilateral safeguard measure. Any bilateral safeguard measure shall not be applied more than twice to the same good.

b) in the case of a good for which the customs duty reaches the final reduction rate after three years from the date of entry into force of this Agreement, a Party may apply a bilateral safeguard measure for a period of time not exceeding two years. The period of application of a bilateral safeguard measure may be extended by up to one year if there is evidence that it is necessary to remedy or prevent serious injury or threat thereof and that the industry is adjusting. A Party shall not apply a bilateral safeguard measure again on the same good for the period of time equal to that during which such measure had been previously applied. Any bilateral safeguard measure shall not be applied more than twice to the same good.

7. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate, which would have been in effect on the date of termination of the measure.

8. Neither Party may apply, with respect to the same good, at the same time:

a) a bilateral safeguard measure; and

b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards, in Annex 1A to the WTO Agreement.

9. Domestic industry referred to in paragraph 1 of this Article means the producers as a whole of the like or directly competitive goods operating within the territory of a Party or those producers whose collective production of the like or directly competitive goods constitutes a major proportion but not less than 25 percent of the total domestic production of such good.

10. Transition period referred to in paragraph 1 of this Article in relation to particular goods subject to a bilateral safeguard measure, means:

a) the period of time from the date of entry into force of this Agreement until seven years from the date of completion of the customs duty elimination or reduction in the case of a good for which the customs

duty reaches the final reduction rate within three years from the date of entry into force of this Agreement;

b) the period of time from the date of entry into force of this Agreement until five years from the date of completion of the customs duty elimination or reduction in the case of a good for which the customs duty reaches the final reduction rate after three years, but only up to five years from the date of entry into force of this Agreement; and

c) the period of time from the date of entry into force of this Agreement until three years from the date of completion of the customs duty elimination or reduction in the case of a good for which the customs duty reaches the final reduction rate after five years from the date of entry into force of this Agreement.

ARTICLE 3.5

Notifications

1. All official communications and documentation exchanged between the Parties with respect to matters covered by this Chapter shall take place between the relevant authorities having the legal power to initiate and conduct investigations under this Chapter (hereinafter referred to as "the investigating authorities"). In case Viet Nam intends to apply a measure under this Chapter, the other Party may designate a different responsible authority and shall notify Viet Nam of its designation.

2. The Parties shall exchange information on the names and contacts of the investigating authorities within 30 days from the date of entry into force of this Agreement. The Parties shall promptly notify each other of any change to the investigating authorities.

3. The Party intending to apply a global safeguard measure shall immediately provide to the other Party a written notification of all pertinent information on

the initiation of an investigation, the provisional findings and the final findings of the investigation.

CHAPTER 4
RULES OF ORIGIN

SECTION I. GENERAL PROVISIONS

ARTICLE 4.1

Scope

The rules of origin provided for in this Chapter shall be applied only for the purposes of granting preferential tariff treatment in accordance with this Agreement.

ARTICLE 4.2

Definitions

For the purposes of this Chapter:

a) **"aquaculture"** means farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from feedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

b) **"authorised body"** means the competent authority designated by a Party to issue a Certificate of Origin under this Agreement;

c) **"CIF value"** means the value of the goods imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation;

d) **"consignment"** means goods that are sent simultaneously covered by one or more transport documents to the consignee from the exporter, as

well as goods that are sent over a single post-invoice or transferred as a luggage of the person crossing the border;

e) **"exporter"** means a person registered in the territory of a Party where the goods are exported from by such person;

f) **"FOB value"** means the free-on-board value of the goods, inclusive of the cost of transport to the port or site of final shipment abroad;

g) **"importer"** means a person registered in the territory of a Party where the goods are imported into by such person;

h) **"material"** means any matter or substance including ingredient, raw material, component or part used or consumed in the production of goods or physically incorporated into goods or subjected to a process in the production of other goods;

i) **"non-originating goods"** or **"non-originating materials"** means goods or materials that do not fulfil the origin criteria of this Chapter;

j) **"originating goods"** or **"originating materials"** means goods or materials that fulfil the origin criteria of this Chapter;

k) **"producer"** means a person who carries out production in the territory of a Party;

l) **"production"** means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, capturing, fishing, hunting, manufacturing, processing or assembling such goods; and

m) **"verification authority"** means the competent governmental authority designated by a Party to conduct verification procedures.

ARTICLE 4.3

Origin Criteria

For the purposes of this Chapter, goods shall be considered as originating in a Party if they are:

a) wholly obtained or produced in such Party as provided for in Article 4.4 of this Agreement; or

b) produced entirely in one or both Parties, exclusively from originating materials from one or both Parties; or

c) produced in a Party using non-originating materials and satisfy the requirements of product specific rules specified in Annex 3 to this Agreement.

ARTICLE 4.4

Wholly Obtained or Produced Goods

For the purposes of Article 4.3 of this Agreement, the following goods shall be considered as wholly obtained or produced in a Party:

a) plants and plant goods, including fruit, berries, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, or gathered in the territory of a Party;

b) live animals born and raised in the territory of a Party;

c) goods obtained from live animals in the territory of a Party;

d) goods obtained from gathering, hunting, capturing, fishing, growing, raising and aquaculture in the territory of a Party;

e) minerals and other naturally occurring substances extracted or taken from the air, soil, waters or seabed and subsoil in the territory of a Party;

f) goods of sea fishing and other marine goods taken from the high seas, in accordance with international law, by a vessel registered or recorded in a Party and flying its flag;

g) goods manufactured exclusively from goods referred to in subparagraph f) of this Article, on board a factory ship registered or recorded in a Party and flying its flag;

h) waste and scrap resulting from production and consumption conducted in the territory of a Party provided that such goods are fit only for the recovery of raw materials;

i) used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials;

j) goods produced in outer space on board a spacecraft provided that the same spacecraft is registered in a Party; and

k) goods produced or obtained in the territory of a Party solely from goods referred to in subparagraphs a) through j) of this Article.

ARTICLE 4.5

Value Added Content

For the purposes of this Chapter and product specific rules specified in Annex 3 to this Agreement, the formula for calculating value added content (hereinafter referred to as "VAC") shall be:

$$\frac{\text{FOB value} - \text{Value of Non-Originating Materials}}{\text{FOB value}} \times 100\%$$

where the value of non-originating materials shall be:

a) CIF value of the materials at the time of importation to a Party; or

b) the earliest ascertained price paid or payable for non-originating materials in the territory of the Party where the working or processing takes place.

When, in the territory of a Party, the producer of the goods acquires non-originating materials within such Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incidental to the transport of those materials from the location of the supplier to the location of production.

ARTICLE 4.6

Insufficient Working or Processing

1. The following operations undertaken exclusively by themselves or in combination with each other are considered to be insufficient to meet the requirements of Article 4.3 of this Agreement:

   a) preserving operations to ensure that a product retains its condition during transportation and storage;

   b) freezing or thawing;

   c) packaging and re-packaging;

   d) washing, cleaning, removing dust, oxide, oil, paint or other coverings;

   e) ironing or pressing of textiles;

   f) colouring, polishing, varnishing, oiling;

   g) husking, partial or total bleaching, polishing and glazing of cereals and rice;

h) operations to colour sugar or form sugar lumps;

i) peeling and removal of stones and shells from fruits, nuts and vegetables;

j) simple sharpening, grinding;

k) cutting;

l) sifting, screening, sorting, classifying;

m) placing in bottles, cans, flasks, bags, cases, boxes, fixing on surface and all other simple packaging operations;

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

o) simple mixing of products (components) which does not lead to a sufficient difference of product from the original components;

p) simple assembly of a product or disassembly of products into parts; and

q) slaughter of animals, sorting of meat.

2. For the purposes of paragraph 1 of this Article, "simple" describes activities which do not require special skills or machines, apparatus or equipment especially designed for carrying out such activities.

ARTICLE 4.7

Accumulation of Origin

Without prejudice to Article 4.3 of this Agreement, the goods or materials originating in a Party, which are used as material in the manufacture of a product in the other Party, shall be considered as originating in such Party where the last operations other than those referred to in paragraph 1 of Article 4.6 of this

Agreement have been carried out. The origin of such material shall be confirmed by a Certificate of Origin (Form EAV) issued by an authorised body.

ARTICLE 4.8

De Minimis

1. Goods that do not undergo a change in tariff classification pursuant to Annex 3 to this Agreement are nonetheless considered originating if:

    a) the value of all non-originating materials that are used in the production of the goods and do not undergo the required change in tariff classification, does not exceed 10 percent of the FOB value of such goods; and

    b) the goods meet all other applicable requirements of this Chapter.

2. The value of materials referred to in subparagraph a) of paragraph 1 of this Article shall be included in the value of non-originating materials for any applicable VAC requirement.

ARTICLE 4.9

Direct Consignment

1. Preferential tariff treatment in accordance with this Chapter shall be granted to originating goods provided that such goods are transported directly from the territory of the exporting Party to the territory of the importing Party.

2. Notwithstanding paragraph 1 of this Article, originating goods may be transported through the territory of one or more third countries, provided that:

    a) transit through the territory of a third country is justified for geographical reasons or related exclusively to transport requirements;
    b) the goods have not entered into trade or consumption there; and

c) the goods have not undergone any operation there other than unloading, reloading, storing or any necessary operation designed to preserve their condition.

3. A declarant shall submit appropriate documentary evidence to the customs authorities of the importing Party confirming that the conditions set out in paragraph 2 of this Article have been fulfilled. Such evidence shall be provided to the customs authorities of the importing Party by submission of:

a) the transport documents covering the passage from the territory of a Party to the territory of the other Party containing:

i. an exact description of the goods;

ii. the dates of unloading and reloading of the goods (if the transport documents do not contain the dates of unloading and reloading of the goods, other supporting document containing such information shall be submitted in addition to transport documents); and

iii. where applicable:

- the names of the ships or other means of transport used;

- the containers' numbers;

- the conditions under which the goods remained in the country of transit in proper condition;

- the marks of the customs authorities of the country of transit; and

b) the commercial invoice in respect of the goods.

4. A declarant may submit other supporting documents to prove that the requirements of paragraph 2 of this Article are fulfilled.

5. If the transport documents cannot be provided, a document issued by the customs authorities of the country of transit containing all the information referred to in subparagraph a) of paragraph 3 of this Article shall be submitted.

6. If a declarant fails to provide the customs authorities of the importing Party with documentary evidence of direct consignment, preferential tariff treatment shall not be granted.

ARTICLE 4.10

Direct Purchase

1. The importing Party shall grant preferential tariff treatment for originating goods in cases where the invoice is issued by a person registered in a third country, provided that such goods meet the requirements of this Chapter.

2. Notwithstanding paragraph 1 of this Article the importing Party shall not grant preferential tariff treatment in cases where the invoice is issued by a person registered in a third country included in the list of offshore countries to be established in a joint protocol. The respective competent authorities of the Parties shall be entitled to adopt such protocol by mutual consent and shall make it publicly available.

3. Without prejudice to paragraph 2 of this Article before the joint protocol referred to in paragraph 2 of this Article is adopted, the list of offshore countries or territories specified in Annex 4 to this Agreement shall apply.

ARTICLE 4.11

Packaging Materials for Retail Sale

1. Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have

undergone the applicable change in tariff classification set out in Annex 3 to this Agreement.

2. Notwithstanding paragraph 1 of this Article in determining whether the goods fulfil the VAC requirement, the value of the packaging used for retail sale will be counted as originating or non-originating materials, as the case may be, in calculating the VAC of the goods.

ARTICLE 4.12

Packing Materials for Shipment

Packing materials and containers in which goods are packed exclusively for transport shall not be taken into account for the purposes of establishing whether the goods are originating.

ARTICLE 4.13

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

1. In determining whether the goods fulfil the change in tariff classification requirements specified in Annex 3 to this Agreement, accessories, spare parts, tools and instructional or other information materials, which are part of the normal equipment and included in its FOB price, or which are not separately invoiced, shall be considered as part of the goods in question and shall not be taken into account in determining whether the goods qualify as originating.

2. Notwithstanding paragraph 1 of this Article in determining whether the goods fulfil the VAC requirement, the value of accessories, spare parts, tools and instructional or other information materials shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating VAC of the goods.

3. This Article shall apply only where:

a) accessories, spare parts, tools and instructional or other information materials presented with the goods are not invoiced separately from such goods; and

b) the quantities and value of accessories, spare parts, tools and instructional or other information materials presented with the goods are customary for such goods.

ARTICLE 4.14

Sets

Sets, as defined in Rule 3 of the General Rules of the interpretation of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 percent of the FOB value of the set.

ARTICLE 4.15

Indirect Materials

In order to determine the origin of goods, the origin of the following indirect materials which might be used in the production of such goods and not be incorporated into such goods shall not be taken into account:

a) fuel and energy;

b) tools, dies and moulds;

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

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

e) gloves, glasses, footwear, clothing, safety equipment;

f) equipment, devices used for testing or inspecting the goods;

g) catalyst and solvent; and

h) any other goods that are not incorporated into such goods but the use of which in the production of such goods can be demonstrated to be a part of that production.

SECTION II. DOCUMENTARY PROOF OF ORIGIN

ARTICLE 4.16

Claim for Preferential Tariff Treatment

1. For the purposes of obtaining preferential tariff treatment, the declarant shall submit a Certificate of Origin to the customs authorities of the importing Party in accordance with the requirements of this Section.

2. The Certificate of Origin submitted to the customs authorities of the importing Party shall be an original, valid and in conformity with the format as set out in Annex 5 to this Agreement and shall be duly completed in accordance with the requirements set out in Annex 5 to this Agreement.

3. The authorised body of the exporting Party shall ensure that Certificates of Origin are duly completed in accordance with the requirements set out in Annex 5 to this Agreement.

4. The Certificate of Origin shall be valid for a period of 12 months from the date of issuance and must be submitted to the customs authorities of the importing Party within that period but not later than the moment of the

submission of the import customs declaration, except in circumstances stipulated in paragraph 2 of Article 4.20 of this Agreement.

5. Where the central customs authorities and the authorised bodies of the Parties have developed and implemented the Electronic Origin Certification and Verification System (hereinafter referred to as "EOCVS") referred to in Article 4.29 of this Agreement, the customs authorities of the importing Party in accordance with its respective domestic laws and regulations may not require the submission of the original Certificate of Origin if the customs declaration is submitted by electronic means. In this case, the date and number of such Certificate of Origin shall be specified in the customs declaration. Where the customs authorities of the importing Party have a reasonable doubt as to the origin of the goods for which preferential tariff treatment is claimed and/or there is a discrepancy with the information containing in the EOCVS, the customs authorities of the importing Party may require the submission of the original Certificate of Origin.

ARTICLE 4.17

Circumstances When Certificate of Origin Is Not Required

A Certificate of Origin is not required in order to obtain preferential tariff treatment for commercial or non-commercial importation of originating goods where the customs value does not exceed the amount of 200 US dollars or the equivalent amount in the importing Party's currency or such higher amount as such importing Party may establish, provided that the importation does not form part of one or more consignments that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the submission of the Certificate of Origin.

ARTICLE 4.18

Issuance of Certificate of Origin

1. The producer or exporter of the goods or its authorised representative shall apply to an authorised body of the exporting Party for a Certificate of Origin in writing or by electronic means if applicable.

2. The Certificate of Origin shall be issued by the authorised body of the exporting Party to the producer or exporter of the goods or its authorised representative prior to or at the time of exportation whenever the goods to be exported can be considered originating in a Party within the meaning of this Chapter.

3. The Certificate of Origin shall cover the goods under one consignment.

4. Each Certificate of Origin shall bear a unique reference number separately given by the authorised body.

5. If all goods covered by the Certificate of Origin cannot be listed on one page, additional sheets, as set out in Annex 5 to this Agreement, shall be used.

6. The Certificate of Origin shall be done in hard copy and shall comprise one original and two copies.

7. One copy shall be retained by the authorised body of the exporting Party. The other copy shall be retained by the exporter.

8. Without prejudice to paragraph 4 of Article 4.16 of this Agreement, in exceptional cases, where a Certificate of Origin has not been issued prior to or at the time of exportation it may be issued retroactively and shall be marked "ISSUED RETROACTIVELY".

9. The submitted original Certificate of Origin shall be retained by the customs authorities of the importing Party except in circumstances stipulated in its respective domestic laws and regulations.

ARTICLE 4.19

Minor Discrepancies

1. Where the origin of the goods is not in doubt, the discovery of minor discrepancies between the information in the Certificate of Origin and in the documents submitted to the customs authorities of the importing Party shall not, of themselves, invalidate the Certificate of Origin, if such information in fact corresponds to the goods submitted.

2. For multiple goods declared under the same Certificate of Origin, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment for the remaining goods covered by the Certificate of Origin.

ARTICLE 4.20

Specific Cases of Issuance of Certificate of Origin

1. In the event of theft, loss or destruction of a Certificate of Origin, the producer or exporter of the goods or its authorised representative may apply to the authorised body of the exporting Party for a certified duplicate of the original Certificate of Origin, specifying the reasons for such application. The duplicate shall be made on the basis of the previously issued Certificate of Origin and supporting documents. A certified duplicate shall bear the words "DUPLICATE OF THE CERTIFICATE OF ORIGIN NUMBER_DATE_". The certified duplicate of a Certificate of Origin shall be valid no longer than 12 months from the date of issuance of the original Certificate of Origin.

2. Due to accidental errors or omissions made in the original Certificate of Origin, the authorised body shall issue the Certificate of Origin in substitution for the original Certificate of Origin. In this instance, the Certificate of Origin shall bear the words: "ISSUED IN SUBSTITUTION FOR THE CERTIFICATE OF ORIGIN NUMBER___DATE___". Such Certificate of Origin shall be valid no longer than 12 months from the date of issuance of the original Certificate of Origin.

ARTICLE 4.21

Alterations in Certificate of Origin

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous data and printing any additional information required. Such alteration shall be approved by a person authorised to sign the Certificate of Origin and certified by an official seal of the appropriate authorised body.

ARTICLE 4.22

Record-Keeping Requirements

1. The producer and/or exporter of the goods shall keep all records and copies of the documents submitted for the issuance of a Certificate of Origin for the period of no less than three years from the date of issuance of the Certificate of Origin.

2. An importer who has been granted preferential tariff treatment must keep the copy of the Certificate of Origin, based on the date when the preferential tariff treatment was granted, for the period of no less than three years.

3. The application for a Certificate of Origin and all documents related to such application shall be retained by the authorised body for the period of no less than three years from the date of issuance of the Certificate of Origin.

SECTION III. PREFERENTIAL TARIFF TREATMENT

ARTICLE 4.23

Granting Preferential Tariff Treatment

1. Preferential tariff treatment under this Agreement shall be applied to originating goods that satisfy the requirements of this Chapter.

2. Customs authorities of the importing Party shall grant preferential tariff treatment to originating goods of the exporting Party provided that:

    a) the goods satisfy the origin criteria referred to in Article 4.3 of this Agreement;

    b) the declarant demonstrates compliance with the requirements of this Chapter;

    c) a valid and duly completed original Certificate of Origin has been submitted in accordance with the requirements of Section II (Documentary Proof of Origin) of this Chapter to the customs authorities of the importing Party. An original Certificate of Origin may not be required to be submitted if the Parties have implemented the EOCVS as stipulated in paragraph 5 of Article 4.16 of this Agreement.

3. Notwithstanding paragraph 2 of this Article, where the customs authorities of the importing Party have a reasonable doubt as to the origin of the goods for which preferential tariff treatment is claimed and/or to the authenticity of the submitted Certificate of Origin, such customs authorities may suspend or deny the application of preferential tariff treatment to such goods. However, the goods can be released in accordance with the requirements of such Party's respective domestic laws and regulations.

ARTICLE 4.24

Denial of Preferential Tariff Treatment

1. Where the goods do not meet the requirements of this Chapter or where the importer or exporter of the goods fails to comply with the requirements of this Chapter, the customs authorities of the importing Party may deny preferential tariff treatment and recover unpaid customs duties in accordance with the respective domestic laws and regulations.

2. The customs authorities of the importing Party may deny preferential tariff treatment if:

   a) the goods do not meet the requirements of this Chapter to be considered as originating in the exporting Party; and/or

   b) other requirements of this Chapter are not met, including:

      i. the requirements of Article 4.9 of this Agreement;

      ii. the requirements of Article 4.10 of this Agreement;

      iii. the submitted Certificate of Origin has not been duly completed as specified in Annex 5 to this Agreement;

   c) the verification procedures undertaken under Articles 4.30 and 4.31 of this Agreement are unable to establish the origin of the goods or indicate the inconsistency of the origin criteria;

   d) the verification authority of the exporting Party has confirmed that the Certificate of Origin had not been issued (i.e. forged) or had been annulled (withdrawn);

   e) the customs authorities of the importing Party receive no reply within a maximum of six months after the date of a verification request made to the verification authority of the exporting Party, or if the response to the request does not contain sufficient information to conclude whether the goods originate in a Party; or

   f) the customs authorities of the importing Party within 60 days from the date of dispatch of the notification, stipulated in paragraph 2 of Article 4.31 of this Agreement, do not receive a written consent from the verification authority, pursuant to paragraph 5 of Article 4.31 of this Agreement, for conducting a verification visit or receive a refusal to conduct such verification visit.

3. Where the importing Party determines through verification procedures that an exporter or producer of the goods has engaged in providing false and/or incomplete information for the purposes of obtaining Certificates of Origin, customs authorities of the importing Party may deny preferential tariff treatment to identical goods covered by the Certificates of Origin issued to that exporter or producer in accordance with its respective domestic laws and regulations.

4. In cases as set out in subparagraph b) of paragraph 2 of this Article and paragraph 1 of Article 4.25 of this Agreement customs authorities of the importing Party are not required to make a verification request, as provided for in Article 4.30 of this Agreement, to the authorised body for the purposes of making decisions on denial of preferential tariff treatment.

ARTICLE 4.25

Temporary Suspension of Preferential Tariff Treatment

1. Where a Party has found:

    a) systematic fraud regarding claims of preferential tariff treatment under this Agreement in respect of the goods exported or produced by a person of the other Party; or

    b) that the other Party systematically and unjustifiably refuses to fulfil obligations under Articles 4.30 and/or 4.31 of this Agreement,

such Party may in exceptional circumstances temporarily suspend preferential tariff treatment under this Agreement.

2. Temporary suspension of preferential tariff treatment referred to in paragraph 1 of this Article may be applied to the goods concerned:

    a) of a person where the importing Party has concluded that such person of the exporting Party has committed systematic fraud regarding claims of preferential tariff treatment under this Agreement;

b) of the person who is subject to verification request or verification visit request referred to in subparagraph b) of paragraph 1 of this Article.

3. Where the importing Party has concluded that the already suspended preferential tariff treatment in accordance with subparagraph a) of paragraph 2 of this Article had not resulted in cessation of systematic fraud regarding claims of preferential tariff treatment under this Agreement, it may temporarily suspend preferential tariff treatment with regard to identical goods classified in the same tariff lines at 8-10 digit level of the respective domestic nomenclatures of the Parties.

4. For the purposes of this Article:

a) a finding of systematic fraud can be made where a Party has concluded that a person of the other Party has systematically provided false or incorrect information in order to obtain preferential tariff treatment under this Agreement as a result of an investigation based on objective, compelling and verifiable information;

b) systematic and unjustifiable refusal to fulfil obligations under Articles 4.30 and/or 4.31 of this Agreement means a systematic refusal to verify the originating status of the goods concerned and/or to carry out verification visits as requested by a Party or absence of response to verification and verification visit requests;

c) identical goods means the goods which are the same in all respects including physical characteristics, quality and reputation.

5. A Party that has made a finding pursuant to paragraph 1 or 3 of this Article, shall:

a) notify the other Party and provide the information and evidence upon which the finding was based;

b) engage in consultations with the other Party with a view to achieving a mutually acceptable solution.

6. If the Parties have not achieved a mutually acceptable solution within 30 days of the engagement into consultations pursuant to subparagraph b) of paragraph 5 of this Article, the Party that has made the finding shall refer the issue to the Joint Committee.

7. If the Joint Committee has not resolved the issue within 60 days of the referral of such issue to the Joint Committee, the Party which has made the finding may temporarily suspend preferential tariff treatment under this Agreement pursuant to paragraphs 2 and 3 of this Article. The Party that has made a decision on temporary suspension shall immediately notify the other Party and the Joint Committee. Temporary suspension shall not apply to the goods which have already been exported on the day that the temporary suspension comes into effect. The day of such exportation shall be the date of a transport document issued by a carrier.

8. Temporary suspension of preferential tariff treatment under this Article may be applied until the exporting Party provides convincing evidence of the ability to comply with the requirements of this Chapter and ensure the fulfilment of all the requirements of this Chapter by producers or exporters of the goods but shall not exceed a period of four months, which may be renewed for no longer than three months.

9. Any suspension under this Article and any renewed suspension shall be subject to periodic consultations of the Parties with a view to resolving the issue.

SECTION IV. ADMINISTRATIVE COOPERATION

ARTICLE 4.26

Administrative Cooperation Language

Any notification or communication under this Section shall be conducted between the Parties through the relevant authorities in the English language.

ARTICLE 4.27

Authorised Body and Verification Authority

Each Government of the Parties shall designate or maintain an authorised body and a verification authority.

ARTICLE 4.28

Notifications

1. Prior to the issuance of any Certificate of Origin under this Agreement by the authorised body, each Party shall provide the other Party, through the Ministry of Industry and Trade of Viet Nam and the Eurasian Economic Commission, respectively, with the names and addresses of each authorised body and verification authority, together with the original and legible specimen impressions of their stamps, sample of the Certificate of Origin to be used and data on the security features of the Certificate of Origin.

2. Viet Nam shall provide the Eurasian Economic Commission with the original information referred to in paragraph 1 of this Article in sextuplicate. The Eurasian Economic Commission may request Viet Nam to provide additional sets of such information.

3. Viet Nam and the Eurasian Economic Commission shall publish on the internet the information on the names and addresses of the authorised body and verification authority of each Party.

4. Any change to the information stipulated in this Article shall be notified by the Ministry of Industry and Trade of Viet Nam and the Eurasian Economic Commission in advance and in the same manner.

ARTICLE 4.29

Development and Implementation of Electronic Origin Certification and Verification System

1. The Parties shall endeavour to implement an EOCVS no later than two years from the date of entry into force of this Agreement.

2. The purpose of the EOCVS is the creation of a web-database that records the details of all Certificates of Origin issued by an authorised body and that is accessible to the customs authorities of the other Party to check the validity and content of any issued Certificate of Origin.

3. The Parties shall establish a working group that shall endeavour to develop and implement an EOCVS.

ARTICLE 4.30

Verification of Origin

1. Where the customs authorities of the importing Party have a reasonable doubt about the authenticity of a Certificate of Origin and/or the compliance of the goods, covered by the Certificate of Origin, with the origin criteria, pursuant to Article 4.3 of this Agreement, and in the case of a random check, they may send a request to the verification authority or authorised body of the exporting Party to confirm the authenticity of the Certificate of Origin and/or the compliance of the goods with the origin criteria and/or to provide, if requested, documentary evidence from the producer and/or exporter of the goods.

2. All verification requests shall be accompanied by sufficient information to identify the concerned goods. A request to the verification authority of the exporting Party shall be accompanied by a copy of the Certificate of Origin and shall specify the circumstances and reasons for the request.

3. The recipient of a request under paragraph 1 of this Article shall respond to the requesting customs authorities of the importing Party within six months after the date of such verification request.

4. In response to a request under paragraph 1 of this Article verification authority of the exporting Party shall clearly indicate whether the Certificate of Origin is authentic and/or whether the goods can be considered as originating in such Party including by providing requested documentary evidence received from the producer and/or exporter of the goods. Before the response to the verification request, paragraph 3 of Article 4.23 of this Agreement may be applied. The customs duties paid shall be refunded if the received results of the verification process confirm and clearly indicate that the goods qualify as originating and all other requirements of this Chapter are met.

ARTICLE 4.31

Verification Visit

1. If the customs authorities of the importing Party are not satisfied with the outcome of the verification referred to in Article 4.30 of this Agreement, they may, under exceptional circumstances, request verification visits to the exporting Party to review the records referred to in Article 4.22 of this Agreement and/or observe the facilities used in the production of the goods.

2. Prior to conducting a verification visit pursuant to paragraph 1 of this Article the customs authorities of the importing Party shall deliver a written notification of their intention to conduct the verification visit to the verification authority of the Party in the territory of which the verification visit is to occur.

3. The written notification referred to in paragraph 2 of this Article shall be as comprehensive as possible and shall include, *inter alia*:

    a) the name of the customs authorities of the Party issuing the notification;

b) the names of the producer and/or exporter of the goods whose premises are to be visited;

c) the proposed date of the verification visit;

d) the coverage of the proposed verification visit, including reference to the goods subject to the verification and to the doubts regarding their origin; and

e) the names and designation of the officials performing the verification visit.

4. Verification authority shall send the verification request to the producer and/or exporter of the goods whose premises are to be visited and transfer its written consent to the requesting Party within 60 days from the date of dispatch of the notification pursuant to paragraph 2 of this Article.

5. Where a written consent from the verification authority is not obtained within 60 days from the date of dispatch of the notification pursuant to paragraph 2 of this Article or the notifying Party receives a refusal to conduct such a verification visit, the notifying Party shall deny preferential tariff treatment to the goods referred to in the Certificate(s) of Origin that would have been subject to the verification visit.

6. Any verification visit shall be launched within 60 days from the date of the receipt of written consent and finished within a reasonable period of time.

7. The authority conducting the verification visit shall, within a maximum period of 90 days from the first day the verification visit was conducted, provide the producer and/or exporter of the goods, whose goods and premises are subject to such verification, and the verification authority of the exporting Party with a written determination of the outcomes of the verification visit.

8. The verification visit including the actual visit and determination of whether the concerned goods are originating or not shall be carried out and its results sent to the authorised body within a maximum of 210 days. Before the results

of the verification visit are available paragraph 3 of Article 4.23 of this Agreement may be applied.

9. Any suspended or denied preferential tariff treatment shall be reinstated upon the written determination that the goods qualify as originating and the certain origin criteria under this Agreement are fulfilled.

10. Verification team must be formed by the central customs authority of the importing Party in accordance with the respective domestic laws and regulations.

11. The verification authority or the authorised body of the exporting Party shall assist in the verification visit conducted by the customs authorities of the importing Party.

12. The producer and/or exporter of the goods who has given consent for verification visit, shall assist in its implementation, provide access to the premises, financial (accounting) and production documents related to the subject of the verification visit and shall provide any additional information and/or documents, if so requested.

13. If there are obstacles by the authorities or entities of the inspected Party during the verification visit, which result in the absence of possibility to conduct the verification visit, the importing Party has the right to deny preferential tariff treatment to the concerned goods.

14. All costs relating to the conducting of the verification visit shall be borne by the importing Party.

ARTICLE 4.32

Confidentiality

All information provided pursuant to this Chapter shall be treated by the Parties as confidential in accordance with their respective domestic laws and regulations.

It shall not be disclosed without the permission of the person or authority of the Party providing it.

ARTICLE 4.33

Penalties or Other Measures against Fraudulent Acts

Each Party shall provide for criminal or administrative penalties for violations of its respective laws and regulations related to this Chapter.

ARTICLE 4.34

Sub-Committee on Rules of Origin

1. For the purposes of effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to as "the ROO Sub-Committee").

2. The ROO Sub-Committee shall have the following functions:

    a) reviewing and making appropriate recommendations to the Joint Committee and the Goods Committee on:

        i. transposition of Annex 3 to this Agreement that is in the nomenclature of the revised HS following periodic amendments of the HS. Such transposition shall be carried out without impairing the existing commitments and shall be completed in a timely manner;

        ii. implementation and operation of this Chapter, including proposals for establishing implementing arrangements;

        iii. failure to fulfil the obligations by the Parties, as determined in this Section;

iv. technical amendments to this Chapter;

v. amendments to Annex 3 to this Agreement;

vi. disputes arising between the Parties during the implementation of this Chapter; and

vii. any amendment to the provisions of this Chapter and to Annexes 3, 4 and 5 to this Agreement;

b) considering any other matter proposed by a Party relating to this Chapter;

c) reporting the findings of the ROO Sub-Committee to the Goods Committee; and

d) performing other functions as may be delegated by the Joint Committee pursuant to Article 1.5 of this Agreement.

3. The ROO Sub-Committee shall be composed of the representatives of the Parties and may invite representatives of other entities of the Parties with necessary expertise relevant to the issues to be discussed upon mutual agreement of the Parties.

4. The ROO Sub-Committee shall meet at such time and venue as may be agreed by the Parties but not less than once a year.

5. A provisional agenda for each meeting shall be forwarded to the Parties, as a general rule, no later than one month before the meeting.

SECTION V. TRANSITIONAL PROVISIONS

ARTICLE 4.35

Goods in Transportation or Storage

Originating goods which have been in transportation from the exporting Party to the importing Party, or which have been in temporary storage in a bonded area in the importing Party for a period not exceeding one year before the entry into force of this Agreement, shall be granted preferential tariff treatment if they are imported into the importing Party on or after the date of entry into force of this Agreement, subject to the submission of a Certificate of Origin issued retroactively to the customs authorities of the importing Party and subject to the respective domestic laws and regulations or administrative practices of the importing Party.

CHAPTER 5
CUSTOMS ADMINISTRATION AND TRADE FACILITATION

ARTICLE 5.1

Scope

This Chapter shall apply to customs administration measures and performance of customs operations required for the release of goods traded between the Parties, in order to promote:

a) transparency of customs procedures and customs formalities;

b) trade facilitation and harmonisation of customs operations; and

c) customs cooperation including exchange of information between the central customs authorities of the Parties.

ARTICLE 5.2

Definitions

For the purposes of this Chapter:

a) **"customs administration"** means organisational and management activities of the customs authorities of a Party as well as activities carried out within the regulatory framework while implementing the objectives in the customs area;

b) **"customs laws and regulations"** means any norm and regulation enforced by the customs authorities of a Party including laws, rulings, decrees, writs, rules and others;

c) **"express consignments"** means goods delivered through high-speed transportation systems by any type of transport, using an electronic

information management system and tracking the movement in order to deliver the goods to the recipient in accordance with an individual invoice for the minimum possible or a fixed period of time, except for goods sent by international post;

d) **"inward processing"** means the customs procedure under which foreign goods can be brought into the customs territory of a Party conditionally relieved from payment of customs duties and taxes on the basis that such goods are intended for processing or repair and subsequent exportation from the customs territory of such Party within a specified period of time;

e) **"outward processing"** means the customs procedure under which goods, which are in free circulation in the customs territory of a Party, may be temporarily exported for processing abroad and then re-imported with total exemption from customs duties and taxes; and

f) **"temporary admission"** means the customs procedure under which foreign goods can be brought into the customs territory of a Party conditionally relieved totally or partially from payment of customs duties and taxes on the basis that such goods shall be re-exported within a specified period of time in accordance with the customs laws and regulations of such Party.

ARTICLE 5.3

Facilitation of Customs Administration Measures

1. Each Party shall ensure that the customs administration measures applied by its customs authorities are predictable, consistent and transparent.

2. Customs administration measures of each Party shall, where possible and to the extent permitted by its customs laws and regulations, be based on the standards and recommended practices of the World Customs Organization.

3. The central customs authorities of each Party shall endeavour to review their customs administration measures with a view to simplifying such measures in order to facilitate trade.

ARTICLE 5.4

Release of Goods

1. Each Party shall adopt or maintain the performance of customs procedures and operations for the efficient release of goods in order to facilitate trade between the Parties. This shall not require a Party to release goods where its requirements for the release of such goods have not been met.

2. Pursuant to paragraph 1 of this Article, each Party shall:

    a) provide for the release of goods within a period of time no longer than 48 hours from the registration of a customs declaration except in the circumstances stipulated in the customs laws and regulations of the Parties; and

    b) endeavour to adopt or maintain electronic submission and processing of customs information in advance of arrival of the goods to expedite the release of goods upon arrival.

ARTICLE 5.5

Risk Management

Customs authorities of the Parties shall apply a risk management system by means of a systematic assessment of risks to focus inspections on high-risk goods and simplify the application of customs operations on low-risk goods.

ARTICLE 5.6

Customs Cooperation

1. With a view to facilitating the effective operation of this Agreement, central customs authorities of the Parties shall encourage cooperation with each other on key customs issues that affect goods traded between the Parties.

2. Where a central customs authority of a Party in accordance with such Party's respective laws and regulations has a reasonable suspicion of an unlawful activity, such central customs authority may request the central customs authority of the other Party to provide specific confidential information normally collected in connection with the exportation and/or importation of goods.

3. A Party's request under paragraph 2 of this Article shall be in writing, specifying the purpose for which the information is sought and shall be accompanied by sufficient information to identify the concerned goods.

4. The requested Party under paragraph 2 of this Article shall provide a written response containing the requested information.

5. The central customs authority of the requested Party shall endeavour to provide any other information to the central customs authority of the requesting Party that would assist such central customs authority in determining whether imports from or exports to the requesting Party are in compliance with such Party's respective laws and regulations.

6. The central customs authorities of the Parties shall endeavour to establish and maintain channels of communication for customs cooperation, including establishing contact points that will facilitate the rapid and secure exchange of information, and improve coordination on customs issues.

ARTICLE 5.7

Information Exchange

1. In order to facilitate the performance of customs operations, to expedite the release of goods and to prevent violations of customs laws and regulations, the central customs authorities of the Parties shall create and implement electronic information exchange on a regular basis between them (hereinafter referred to as "electronic information exchange") within five years from the date of entry into force of this Agreement.

2. On behalf of the Eurasian Economic Union, the Eurasian Economic Commission shall coordinate the creation and facilitate the operation of the electronic information exchange.

3. For the purposes of this Article, "information" means relevant and authentic data from customs declarations and transport documents.

4. Within one year from the date of entry into force of this Agreement, the central customs authorities of the Member States of the Eurasian Economic Union with the assistance of the Eurasian Economic Commission and the central customs authority of Viet Nam shall enter into consultations in order to develop electronic information exchange in accordance with paragraph 6 of this Article.

5. All requirements and specifications for the operation of electronic information exchange as well as specific contents of information to be exchanged shall be set out in separate protocols between the central customs authorities of the Parties. Such information shall be sufficient for identification of transported goods and performance of efficient customs control.

6. The implementation of electronic information exchange shall be divided into the following stages:

    a) not later than two years from the date of entry into force of this Agreement the authorities involved shall establish trial electronic information exchange between individual customs authorities of the

Parties which are responsible for the customs clearance of particular goods traded between the Parties. Such individual customs authorities and such particular goods shall be determined by the central customs authorities of the Parties in a protocol stipulated in paragraph 5 of this Article;

b) not later than three years from the date of entry into force of this Agreement electronic information exchange shall cover goods for which the trade flow between the Parties will have increased more than 20 percent from the date of entry into force of this Agreement; and

c) not later than five years from the date of entry into force of this Agreement central customs authorities of the Parties shall provide the application of electronic information exchange, covering all goods traded between the Parties, for all customs authorities concerned.

7. Any information exchanged in accordance with the provisions of this Article shall be treated as confidential and shall be used for customs purposes only.

8. The operation of electronic information exchange shall not hinder the application or establishment of any information exchange based on international obligations of the Parties.

ARTICLE 5.8

Publication

1. The competent authorities of each Party shall publish, on the internet or through any other appropriate media, the customs laws and regulations of such Party.

2. The competent authorities of each Party shall designate or maintain one or more enquiry points to process enquiries from interested persons concerning customs issues, and shall publish on the internet information concerning such enquiry points.

3. The competent authorities of a Party shall inform the competent authorities of the other Party of the contact information of the designated enquiry points.

4. To the extent possible, each Party shall publish in advance its laws and regulations of general application governing customs issues that it proposes to adopt and shall provide interested persons with an opportunity to comment before adopting such laws and regulations.

ARTICLE 5.9

Advance Rulings

1. Customs authorities of the Parties shall provide any applicant registered in the importing Party in writing with advance rulings in respect of tariff classification, origin of goods and any additional matter which a Party considers appropriate. The Parties shall endeavour to adopt or maintain the issuance of advance rulings in respect of the application of the method to be used for determining the customs value.

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

    a) provide that the applicant may apply for an advance ruling before the importation of goods;

    b) require that the applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an advance ruling;

    c) provide that its customs authority may, within 30 days from the date of application, request that the applicant provide additional information within a specified period of time;

    d) provide that any advance ruling be based on the facts and circumstances presented by the applicant and any other relevant information available to its customs authority; and

e) provide that an advance ruling be issued to the applicant expeditiously, or in any case within 90 days from the date of the application or 60 days from the date of receipt of all necessary additional information.

3. A customs authority of a Party may reject requests for an advance ruling where the additional information requested by it in accordance with subparagraph c) of paragraph 2 of this Article is not provided within the specified period of time.

4. An advance ruling is valid for at least three years from the date of issuance, or such other period of time exceeding the specified period as required by the customs laws and regulations of the Parties.

5. A customs authority of a Party may modify or revoke an advance ruling:

a) upon a determination that the advance ruling was based on false or inaccurate information;

b) if there is a change in the customs laws and regulations consistent with this Agreement; or

c) if there is a change in material facts or circumstances on which the advance ruling is based.

6. Subject to confidentiality requirements, the customs authorities of the Parties shall publish advance rulings.

ARTICLE 5.10

Customs Valuation

The customs value of goods traded between the Parties shall be determined in accordance with the customs laws and regulations of the importing Party based on the provisions of Article VII of GATT 1994 and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement.

ARTICLE 5.11

Tariff Classification

The Parties shall apply nomenclatures of goods based on the current edition of the Harmonized System to goods traded between them.

ARTICLE 5.12

Transit of Goods

The Parties may mutually recognise identification tools and documents applied by the Parties required for the control of goods and vessels as well as other means of transport in transit.

ARTICLE 5.13

Express Consignments

1. Customs authorities of the Parties shall provide expedited customs clearance for express consignments while maintaining appropriate customs control.

2. Express consignments shall be placed under the customs procedure in an expedited manner in accordance with the customs laws and regulations of the respective Party.

ARTICLE 5.14

Temporary Admission of Goods

In accordance with international standards, customs authorities of the Parties shall endeavour to facilitate the performance of customs operations for the customs procedure of temporary admission of goods.

ARTICLE 5.15

Inward Processing and Outward Processing

In accordance with international standards, customs authorities of the Parties shall endeavour to facilitate the performance of customs operations for temporary importation and exportation of goods for inward processing or outward processing.

ARTICLE 5.16

Confidentiality

All information provided in accordance with this Chapter, excluding statistics, shall be treated by the Parties as confidential in accordance with the respective laws and regulations of the Parties. It shall not be disclosed by the authorities of the Parties without the permission of the person or authority of the Party providing such information.

ARTICLE 5.17

Customs Agents (Representatives)

The customs laws and regulations of each Party shall enable declarants to submit their customs declarations without requiring mandatory recourse to the services of customs agents (representatives).

ARTICLE 5.18

Automation

1. The customs authorities of the Parties shall ensure that customs operations may be performed with the use of information systems and information technologies, including those based on electronic means of communication.

2. The central customs authorities of the Parties shall provide declarants with an opportunity to declare goods in electronic form.

ARTICLE 5.19

Review and Appeal

Each Party shall ensure the possibility of administrative review of customs decisions affecting rights of interested persons and judicial appeal against such decisions in accordance with the laws and regulations of the respective Party.

ARTICLE 5.20

Penalties

Each Party shall adopt or maintain measures that allow for the imposition of administrative penalties for violations of its customs laws and regulations during importation and exportation, including provisions on tariff classification, customs valuation, determination of country of origin and obtaining preferential tariff treatment under this Agreement.

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

ARTICLE 6.1

Objectives

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

a) promoting cooperation on the preparation, adoption and application of standards, technical regulations and conformity assessment procedures in order to eliminate unnecessary technical barriers to trade, reduce, where possible, unnecessary costs to exporters;

b) promoting mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;

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

d) strengthening cooperation between the Parties in the work of international bodies related to standardisation and conformity assessment;

e) providing a framework to realise these objectives; and

f) promoting cooperation on issues relating to technical barriers to trade.

ARTICLE 6.2

Scope

1. This Chapter shall apply to all standards, technical regulations and conformity assessment procedures of the Parties that may directly or indirectly affect the trade in goods between the Parties except:

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

    b) sanitary or phytosanitary measures as defined in Chapter 7 (Sanitary and Phytosanitary Measures) of this Agreement.

2. In accordance with this Chapter and the TBT Agreement each Party has the right to prepare, adopt and apply standards, technical regulations and conformity assessment procedures.

ARTICLE 6.3

Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 to the TBT Agreement shall apply, *mutatis mutandis*.

ARTICLE 6.4

Incorporation of the TBT Agreement

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

ARTICLE 6.5

Transparency

1. The Parties acknowledge the importance of transparency with regard to the

preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

2. Each Party should provide the period for comments of at least 60 days following the publication of a notice of the kind envisaged in Articles 2.9 and/or 5.6 of the TBT Agreement, except for situations where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for the Parties.

3. Each Party should allow at least 180 days from the adoption of a technical regulation and/or conformity assessment procedure and their/its entry into force, except for situations where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for the Parties.

4. The Parties shall, to the fullest extent possible, endeavour to exchange information in the English language.

ARTICLE 6.6

Marking and Labelling

The Parties note that in accordance with paragraph 1 of Annex 1 to the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where such technical regulation contains mandatory marking or labelling requirements, they will act in accordance with the principles of Article 2.2 of the TBT Agreement that technical regulations should not be prepared, adopted and applied with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective.

ARTICLE 6.7

Consultations

1. Where the day to day application of standards, technical regulations and conformity assessment procedures is affecting trade between the Parties, a Party may request consultations aimed at resolving the matter. A request for consultations shall be directed to the other Party's contact point established in accordance with Article 6.9 of this Agreement.

2. Each Party shall make every effort to give prompt and positive consideration to any request from the other Party for consultations on issues relating to the implementation of this Chapter.

3. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the Parties may establish an *ad hoc* working group with a view to identifying a workable and practical solution that would facilitate trade. The working group shall comprise representatives of the Parties.

4. Where a Party declines a request from the other Party to establish a working group, it shall, upon request, explain the reasons for its decision.

ARTICLE 6.8

Cooperation

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

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

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

b) exchanging officials of the Parties for training purposes;

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

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

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

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

g) making efficient use of regulatory resources.

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

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

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

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

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

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

ARTICLE 6.9

Competent Authorities and Contact Points

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

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

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

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

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

4. The competent authorities' functions shall include:

    a) monitoring the implementation of this Chapter;

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

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

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

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

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

CHAPTER 7
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 7.1

Objectives

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

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

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

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

ARTICLE 7.2

Scope

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

ARTICLE 7.3

Definitions

For the purposes of this Chapter:

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

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

ARTICLE 7.4

Incorporation of the SPS Agreement

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

ARTICLE 7.5

Equivalence

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

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

ARTICLE 7.6

Adaptation to Regional Conditions

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

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

ARTICLE 7.7

Audit and Inspections

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

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

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

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

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

ARTICLE 7.8

Documents Confirming Safety

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

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

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

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

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

ARTICLE 7.9

Emergency Measures

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

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

ARTICLE 7.10

Contact Points and Information Exchange

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

responsibility of such competent authorities.

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

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

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

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

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

ARTICLE 7.11

Cooperation

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

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

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

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

ARTICLE 7.12

Consultations

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

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

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

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

SECTION I. HORIZONTAL PROVISIONS

ARTICLE 8.1

Objectives

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

ARTICLE 8.2

Scope

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

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

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

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

4. This Chapter shall not apply to:

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

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

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

5. This Chapter shall not prevent a Party to this Chapter from applying measures to regulate the entry of natural persons of the other Party to this Chapter into or their temporary stay in its territory, including those necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party to this Chapter under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of a Party to this Chapter and not for those of any other third country shall not be regarded as nullifying or impairing benefits under the commitments made in this Chapter.

ARTICLE 8.3

Definitions

For the purposes of this Chapter:

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

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

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

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

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

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

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

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

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

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

A juridical person is:

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

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

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

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

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

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

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

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

m) **"measures by Parties to this Chapter affecting trade in services"** include measures in respect of:

   i. the purchase, payment or use of a service;

   ii. the access to and use of, in connection with the supply of a service, services which are required by the Parties to this Chapter to be offered to the public generally.

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

o) **"establishment"** means:

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

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

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

iii. the creation of a branch; or

iv. the creation of a representative office,

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

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

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

ARTICLE 8.4

Other International Agreements

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

ARTICLE 8.5

Domestic Regulation

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

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

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

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

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

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

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

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

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

ARTICLE 8.6

Contact Points

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

ARTICLE 8.7

Denial of Benefits

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

a) any third country; or

b) the former Party.

ARTICLE 8.8

Restrictions to Safeguard the Balance of Payments

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

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

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

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

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

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

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

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

4. Nothing in this Agreement shall affect the rights and obligations of a Party to this Chapter which is a member of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that such Party to this Chapter shall not impose restrictions inconsistently with the conditions provided for in paragraph 1 of this Article.

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

ARTICLE 8.9

Accession

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

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

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

ARTICLE 8.10

Amendments

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

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

ARTICLE 8.11

Consultations

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

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

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

ARTICLE 8.12

Settlement of Disputes between the Parties to this Chapter

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

2. For the purposes of this Chapter:

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

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

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

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

ARTICLE 8.13

Lists of Commitments

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

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

SECTION II. TRADE IN SERVICES

ARTICLE 8.14

Scope

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

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

ARTICLE 8.15

Most-Favoured-Nation Treatment

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

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

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

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

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

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

ARTICLE 8.16

Market Access

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

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

[1] If a Party to this Chapter undertakes a market-access commitment in relation to the supply of a service from the territory of a Party to this Chapter into the territory of the other Party to this Chapter and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital.

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

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

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

ARTICLE 8.17

National Treatment

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

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

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

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

ARTICLE 8.18

Payments and Transfers

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

2. Nothing in this Chapter shall affect the rights and obligations of the Parties to this Chapter as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party to this Chapter shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Section regarding such transactions, except under Article 8.8 of this Agreement or at the request of the International Monetary Fund.

ARTICLE 8.19

Recognition

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

SECTION III. ESTABLISHMENT, COMMERCIAL PRESENCE AND ACTIVITIES

ARTICLE 8.20

Scope

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

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

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

ARTICLE 8.21

National Treatment

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

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

ARTICLE 8.22

Most-Favoured-Nation Treatment

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

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

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

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

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

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

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

ARTICLE 8.23

Market Access

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

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

b) total number of commercial presences set up;

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

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

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

ARTICLE 8.24

Performance Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8.25

Senior Management Boards of Director

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

SECTION IV. MOVEMENT OF NATURAL PERSONS

ARTICLE 8.26

Scope

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

    a) business visitors;

    b) intra-corporate transferees;

    c) installers or servicers;

    d) investors; or

    e) contractual services supplier.

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

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

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

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

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

ARTICLE 8.27

Recognition

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

SECTION V. INVESTMENT

ARTICLE 8.28

Definitions

For the purposes of this Section:

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

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

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

iii. bonds and debentures;

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

v. intellectual property rights;

vi. goodwill;

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

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

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

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

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

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

ARTICLE 8.29

Scope

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

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

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

ARTICLE 8.30

Promotion and Admission of Investments

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

ARTICLE 8.31

Fair and Equitable Treatment and Full Protection and Security

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

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

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

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

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

ARTICLE 8.32

National Treatment

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

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

ARTICLE 8.33

Most-Favoured-Nation Treatment

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

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

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

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

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

ARTICLE 8.34

Compensation for Losses

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

a) its own investors and their investments; or

b) investors of any third country and their investments.

ARTICLE 8.35

Expropriation and Compensation

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

   a) for a public purpose;

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

   c) in a non-discriminatory manner; and

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

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

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

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

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

a) be paid without undue delay;

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

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

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

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

ARTICLE 8.36

Subrogation

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

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

ARTICLE 8.37

Transfer of Payments

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

    a) returns;

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

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

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

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

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

ARTICLE 8.38

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

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

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

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

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

c) the legal and factual basis for each claim;

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8 *bis.*1

Scope

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

ARTICLE 8 *bis.*2

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

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

CHAPTER 9
INTELLECTUAL PROPERTY

ARTICLE 9.1

Objectives

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

ARTICLE 9.2

Definitions

For the purposes of this Chapter:

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

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

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

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

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

ARTICLE 9.3

International Agreements

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

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

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

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

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

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

f) the Patent Cooperation Treaty of 19 June 1970.

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

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

b) the WIPO Copyright Treaty of 20 December 1996;

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

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

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

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

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

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

ARTICLE 9.4

National Treatment

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

ARTICLE 9.5

Most-Favoured-Nation Treatment

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

ARTICLE 9.6

Copyright and Related Rights

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

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

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

ARTICLE 9.7

Trademarks

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

ARTICLE 9.8

Geographical Indications/Appellations of Origin of Goods

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

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

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

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

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

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

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

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

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

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

ARTICLE 9.9

Inventions and Utility Models

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

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

ARTICLE 9.10

Industrial Designs

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

ARTICLE 9.11

Layout Designs (Topographies) of Integrated Circuits

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

ARTICLE 9.12

New Varieties of Plants

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

ARTICLE 9.13

Undisclosed Information

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

ARTICLE 9.14

Protection against Unfair Competition

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

ARTICLE 9.15

Enforcement of Intellectual Property Rights

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

ARTICLE 9.16

Border Measures

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

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

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

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

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

ARTICLE 9.17

Competent Authorities, Contact Points and Information Exchange

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

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

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

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

CHAPTER 10
GOVERNMENT PROCUREMENT

ARTICLE 10.1

Cooperation

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10.2

Information on the Procurement System

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

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

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

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

ARTICLE 10.3

Consultations

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

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

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

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

ARTICLE 10.4

Non-Application of Chapter 14 (Dispute Settlement)

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

ARTICLE 10.5

Contact Points

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

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

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

ARTICLE 10.6

Further Negotiations

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

CHAPTER 11
COMPETITION

ARTICLE 11.1

Basic Principles

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

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

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

ARTICLE 11.2

Anti-Competitive Practices

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

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

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

c) unfair competition.

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

ARTICLE 11.3

Cooperation

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

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

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

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

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

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

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

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

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

ARTICLE 11.4

Consultations

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

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

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

ARTICLE 11.5

Use of Information

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

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

ARTICLE 11.6

Non-Application of Chapter 14 (Dispute Settlement)

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

ARTICLE 11.7

Contact Points

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

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

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

CHAPTER 12
SUSTAINABLE DEVELOPMENT

ARTICLE 12.1

Objectives

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

    a) strengthen cooperation on environmental and labour issues; and

    b) promote sustainable development.

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

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

ARTICLE 12.2

Scope

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

ARTICLE 12.3

General Principles

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

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

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

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

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

ARTICLE 12.4

Upholding Levels of Protection

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

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

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

ARTICLE 12.5

Environmental and Labour Cooperation

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

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

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

    a) exchange of knowledge and experiences;

    b) exchange of experts and researchers;

    c) organisation of joint workshops;

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

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

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

    a) resolving trade-related environmental problems;

    b) environmental policy development and institutional building;

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

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

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

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

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

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

    i) technical assistance and joint regional research programmes.

ARTICLE 12.6

Environmental and Labour Consultations

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

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

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

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

ARTICLE 12.7

International Labour Standards and Agreements

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

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

ARTICLE 12.8

Review of Sustainability Impacts

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

ARTICLE 12.9

Non-Application of Chapter 14 (Dispute Settlement)

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

CHAPTER 13
ELECTRONIC TECHNOLOGIES IN TRADE

ARTICLE 13.1

Scope and Coverage

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

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

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

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

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

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

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

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

ARTICLE 13.2

Definitions

For the purposes of this Chapter:

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

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

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

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

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

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

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

ARTICLE 13.3

Electronic Authentication

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

ARTICLE 13.4

Use of Electronic Documents

1. The Parties shall endeavour:

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

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

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

ARTICLE 13.5

Private Data Protection

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

ARTICLE 13.6

Cooperation on Electronic Technologies in Trade

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

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

ARTICLE 13.7

Electronic Commerce Development

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

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

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

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

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

ARTICLE 13.8

Implementing Arrangements

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

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

CHAPTER 14
DISPUTE SETTLEMENT

ARTICLE 14.1

Objectives

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

ARTICLE 14.2

Definitions

For the purposes of this Chapter:

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

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

ARTICLE 14.3

Scope and Coverage

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

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

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

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

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

ARTICLE 14.4

Information Exchange and *Amicus Curiae*

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

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

ARTICLE 14.5

Good Offices, Conciliation or Mediation

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

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

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

ARTICLE 14.6

Consultations

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

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

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

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

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

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

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

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

ARTICLE 14.7

Establishment of Arbitral Panel

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

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

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

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

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

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

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

ARTICLE 14.8

Appointment of Arbitrators

1. The Arbitral Panel shall consist of three members.

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

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

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

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

4. All arbitrators shall:

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

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

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

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

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

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

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

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

ARTICLE 14.9

Functions of Arbitral Panel

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

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

ARTICLE 14.10

Proceedings of Arbitral Panel

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14.11

Terms of Reference of Arbitral Panel

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

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

ARTICLE 14.12

Termination or Suspension of Proceedings

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

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

ARTICLE 14.13

Reports of Arbitral Panel

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

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

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

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

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

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

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

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

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

ARTICLE 14.14

Implementation

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

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

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

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

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

ARTICLE 14.15

Compensation and Suspension of Benefits

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

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

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

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

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

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

ARTICLE 14.16

Expenses

1. Unless the disputing Parties agree otherwise:

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

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

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

ARTICLE 14.17

Language

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

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

CHAPTER 15
FINAL PROVISIONS

ARTICLE 15.1

Annexes

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

ARTICLE 15.2

Accession

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

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

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

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

ARTICLE 15.3

Withdrawal and Termination

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

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

ARTICLE 15.4

Evolutionary Clause

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

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

ARTICLE 15.5

Amendments

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

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

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

ARTICLE 15.6

Entry into Force

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

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

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

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

For the Socialist Republic of Viet Nam

For the Republic of Armenia

For the Republic of Belarus

For the Republic of Kazakhstan

For the Kyrgyz Republic

For the Russian Federation

For the Eurasian Economic Union