

**AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN  
AND THE  
GOVERNMENT OF MALAYSIA FOR AN ECONOMIC PARTNERSHIP**

---

**Table of Contents**

**Preamble**

**Chapter 1      General Provisions**

Article 1	Objectives
Article 2	General Definitions
Article 3	Transparency
Article 4	Public Comment
Article 5	Administrative Procedures
Article 6	Review and Appeal
Article 7	Administrative Guidance
Article 8	Confidentiality
Article 9	Taxation
Article 10	General and Security Exceptions
Article 11	Relation to Other Agreements
Article 12	Implementing Agreement
Article 13	Joint Committee
Article 14	Sub-Committees
Article 15	Communications

**Chapter 2      Trade in Goods**

Article 16	Definitions
Article 17	Classification of Goods
Article 18	National Treatment
Article 19	Elimination of Customs Duties
Article 20	Customs Valuation
Article 21	Export Subsidy
Article 22	Non-tariff Measures
Article 23	Bilateral Safeguard Measures
Article 24	Restrictions to Safeguard the Balance of Payments
Article 25	Sub-Committee on Trade in Goods
Article 26	Co-operation in the Field of Automotive Industry

**Chapter 3      Rules of Origin**

Article 27	Definitions
Article 28	Originating Goods
Article 29	Accumulation
Article 30	De Minimis
Article 31	Non-qualifying Operations

Article 32	Consignment Criteria
Article 33	Unassembled or Disassembled Goods
Article 34	Fungible Goods and Materials
Article 35	Indirect Materials
Article 36	Accessories, Spare Parts and Tools
Article 37	Packaging Materials and Containers for Retail Sale
Article 38	Packing Materials and Containers for Shipment
Article 39	Claim for Preferential Tariff Treatment
Article 40	Certificate of Origin
Article 41	Advance Rulings
Article 42	Obligations regarding Exportations
Article 43	Request for Checking of Certificate of Origin
Article 44	Verification Visit
Article 45	Determination of Origin and Preferential Tariff Treatment
Article 46	Confidentiality
Article 47	Penalties and Measures against False Declaration
Article 48	Miscellaneous
Article 49	Sub-Committee on Rules of Origin
Article 50	Operational Procedures

#### **Chapter 4 Customs Procedures**

Article 51	Scope
Article 52	Definitions
Article 53	Transparency
Article 54	Customs Clearance
Article 55	Temporary Admission and Goods in Transit
Article 56	Co-operation and Exchange of Information
Article 57	Capacity Building
Article 58	Sub-Committee on Customs Procedures

#### **Chapter 5 Technical Regulations, Standards and Conformity Assessment Procedures**

Article 59	Scope and Objectives
Article 60	Reaffirmation of Rights and Obligations
Article 61	Technical Regulations
Article 62	Acceptance of Results of Conformity Assessment Procedures
Article 63	Mutual Recognition Arrangements
Article 64	Co-operation
Article 65	Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures
Article 66	Enquiry Points
Article 67	Non-Application of Chapter 13

#### **Chapter 6 Sanitary and Phytosanitary Measures**

Article 68	Scope
Article 69	Reaffirmation of Rights and Obligations
Article 70	Sub-Committee on Sanitary and Phytosanitary Measures
Article 71	Enquiry Points
Article 72	Non-Application of Chapter 13

## **Chapter 7 Investment**

Article 73	Scope
Article 74	Definitions
Article 75	National Treatment
Article 76	Most-Favoured-Nation Treatment
Article 77	General Treatment
Article 78	Access to the Courts of Justice
Article 79	Prohibition of Performance Requirements
Article 80	Reservations and Exceptions
Article 81	Expropriation and Compensation
Article 82	Protection from Strife
Article 83	Transfers
Article 84	Subrogation
Article 85	Settlement of Investment Disputes between a Country and an Investor of the Other Country
Article 86	Facilitation of Movement of Investors
Article 87	General and Security Exceptions
Article 88	Temporary Safeguard Measures
Article 89	Prudential Measures
Article 90	Environmental Measures
Article 91	Denial of Benefits
Article 92	Co-operation in Promotion and Facilitation of Investments
Article 93	Sub-Committee on Investment

## **Chapter 8 Trade in Services**

Article 94	Scope and Coverage
Article 95	Definitions
Article 96	Market Access
Article 97	National Treatment
Article 98	Additional Commitments
Article 99	Schedule of Specific Commitments
Article 100	Modification of Schedules
Article 101	Most-Favoured-Nation Treatment
Article 102	Authorisation, Licensing or Qualification
Article 103	Mutual Recognition
Article 104	Transparency
Article 105	Monopolies and Exclusive Service Suppliers
Article 106	Emergency Safeguard Measures
Article 107	Payments and Transfers
Article 108	Restrictions to Safeguard the Balance of Payments
Article 109	Denial of Benefits
Article 110	Sub-Committee on Trade in Services
Article 111	Review of Commitments

## **Chapter 9 Intellectual Property**

Article 112	General Provisions
Article 113	Definitions
Article 114	National Treatment
Article 115	Most-Favoured-Nation Treatment
Article 116	Streamlining and Harmonisation of Procedural Matters
Article 117	Transparency

Article 118	Promotion of Public Awareness Concerning Protection of Intellectual Property
Article 119	Patents
Article 120	Industrial Designs
Article 121	Trademarks for Goods and Services
Article 122	Copyright and Related Rights
Article 123	New Plant Varieties
Article 124	Unfair Competition
Article 125	Enforcement – Border Measures
Article 126	Enforcement – Civil Remedies
Article 127	Enforcement – Criminal Remedies
Article 128	Co-operation
Article 129	Sub-Committee on Intellectual Property
Article 130	Security Exceptions

#### **Chapter 10 Controlling Anti-competitive Activities**

Article 131	Measures against Anti-competitive Activities
Article 132	Co-operation on Controlling Anticompetitive Activities
Article 133	Non-Application of Chapter 13

#### **Chapter 11 Improvement of Business Environment**

Article 134	Basic Principles
Article 135	Sub-Committee on Improvement of Business Environment
Article 136	Recommendations from the Sub-Committee
Article 137	Liaison Office on Improvement of Business Environment
Article 138	Non-Application of Chapter 13

#### **Chapter 12 Co-operation**

Article 139	Basic Principles
Article 140	Fields of Co-operation
Article 141	Areas and Forms of Co-operation
Article 142	Costs of Co-operation
Article 143	Sub-Committee on Co-operation
Article 144	Non-Application of Chapter 13

#### **Chapter 13 Dispute Settlement**

Article 145	Scope
Article 146	Consultations
Article 147	Good Offices, Conciliation or Mediation
Article 148	Establishment of Arbitral Tribunals
Article 149	Functions of Arbitral Tribunals
Article 150	Proceedings of Arbitral Tribunals
Article 151	Suspension and Termination of Proceedings
Article 152	Implementation of Award
Article 153	Expenses

#### **Chapter 14 Final Provisions**

Article 154	Table of Contents and Headings
Article 155	General Review
Article 156	Annexes and Notes

Article 157	Amendment
Article 158	Entry into Force
Article 159	Termination

Annex 1 referred to in Chapter 2	Schedules in relation to Article 19
Annex 2 referred to in Chapter 3	Product Specific Rules
Annex 3 referred to in Chapter 3	Minimum Data Requirement for Certificate of Origin
Annex 4 referred to in Chapter 7	Reservations for Existing and Future Measures
Annex 5 referred to in Chapter 8	Financial Services
Annex 6 referred to in Chapter 8	Schedules of Specific Commitments in relation to Article 99
Annex 7 referred to in Chapter 8	Lists of Most-Favoured-Nation Treatment Exemptions in relation to Article 101

---

### **Preamble**

The Government of Japan and the Government of Malaysia,

*Recognising* that a dynamic and rapidly changing global environment brought about by globalisation and technological progress presents various economic and strategic challenges and opportunities to the Countries;

*Conscious* of their longstanding friendship and strong economic and political ties, that have developed through many years of fruitful and mutually beneficial co-operation between the Countries;

*Believing* that such bilateral relationship will be enhanced by forging mutually beneficial economic partnership through co-operation, trade liberalisation and trade facilitation;

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

*Recognising* that such partnership would create larger and new market, and enhance the attractiveness and vibrancy of their markets;

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

*Bearing* in mind the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") signed in Bali, Indonesia on 8 October 2003;

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

*Determined* to establish a legal framework for an economic partnership between the Countries;

*HAVE AGREED* as follows:

## **Chapter 1**

### **General Provisions**

#### Article 1

##### *Objectives*

The objectives of this Agreement, to be pursued in accordance with its provisions, are:

- (a) to liberalise and facilitate trade in goods and services between the Countries;
- (b) to mutually improve investment opportunities and business environment, and ensure protection for investments and investment activities;
- (c) to establish a framework to enhance closer cooperation on socio-economic partnership, *inter alia*, by way of exchange of information, skills and technology in fields as agreed in this Agreement;
- (d) to ensure protection of intellectual property and to promote co-operation in the field thereof;
- (e) to encourage effective control of and promote cooperation in the field of anti-competitive activities; and
- (f) to create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

#### Article 2

##### *General Definitions*

For the purposes of this Agreement, unless otherwise specified:

- (a) the term “Countries” means Japan and Malaysia and the term “Country” means either Japan or Malaysia;
- (b) the term “GATS” means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended;
- (c) the term “GATT 1994” means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

- (d) the term “Governments” means the Government of Japan and the Government of Malaysia and the term “Government” means either the Government of Japan or the Government of Malaysia;
- (e) the term “Harmonized System (HS)” means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended, and adopted and implemented by the Countries in their respective laws;
- (f) the term “Japan” means all the territory of Japan, including its territorial sea, in which the laws and regulations of Japan are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan;
- (g) the term “Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and the airspace above such areas, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living; and
- (h) the term “WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended.

Note: Nothing in subparagraphs (f) and (g) of this Article shall affect the rights and obligations of the Countries under international law, including those under the United Nations Convention on the Law of the Sea.

### Article 3

#### *Transparency*

1. Each Country shall make publicly available its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Country is a party, with respect to any matter covered by this Agreement.
2. Each Government shall make easily available to the public, the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1 of this Article.
3. Each Government shall, upon the request by the other Government, within a reasonable period of time, respond to specific questions from, and provide information to, the other Government in the English language with respect to matters referred to in paragraph 1 of this Article.
4. When introducing or changing its Country’s laws, regulations or administrative procedures that significantly affect the implementation and operation of this Agreement, each

Government shall endeavour to provide, except in emergency situations, a reasonable interval between the time when such laws, regulations or administrative procedures are published or made publicly available and the time when they enter into force.

#### Article 4

##### *Public Comment*

Each Government shall, in accordance with the laws and regulations of the Country, endeavour to:

- (a) make public in advance regulations of general application that affect any matter covered by this Agreement; and
- (b) provide a reasonable opportunity for comments by the public and give consideration to those comments before adoption of such regulations.

#### Article 5

##### *Administrative Procedures*

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

- (a) inform the applicant of the decision within a reasonable period of time after the submission of an application considered complete under the laws and regulations of the Country, taking into account the established standard period of time referred to in paragraph 3 of this Article; and
- (b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.

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

- (a) make such standards as specific as possible; and
- (b) make such standards publicly available except when it would extraordinarily raise administrative difficulties for the Government.

3. The competent authorities shall, in accordance with the laws and regulations of the Country, endeavour to:

- (a) establish standard periods of time between receipt of applications by the competent authorities and administrative decisions taken in response to submitted applications; and
- (b) make such periods of time publicly available, if it is established.

4. The competent authorities shall, prior to any final decision which imposes obligations on or restricts rights of a person, endeavour to provide that person with:



- (a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and
- (b) a reasonable opportunity to present facts and arguments in support of position of such person,

provided that time, nature of the measure and public interest permit and in accordance with the laws and regulations of the Country.

## Article 6

### *Review and Appeal*

1. Each Country shall maintain judicial tribunals or procedures for the purpose of prompt review and, where warranted, correction of actions taken by the Government regarding matters covered by this Agreement. Such tribunals or procedures shall be independent of the authorities entrusted with the administrative enforcement of such actions.
2. Each Country shall ensure that the parties in any such tribunals or procedures are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record.
3. Each Country shall ensure, subject to appeal or further review as provided in its laws and regulations, that such decision is implemented by the relevant authorities with respect to the action at issue which is taken by the Government.

## Article 7

### *Administrative Guidance*

1. Where a competent authority of a Government renders administrative guidance with regard to any matter covered by this Agreement, such competent authority shall ensure that the administrative guidance does not exceed the scope of its competence and shall not require the person concerned to comply with its administrative guidance without voluntary co-operation.
2. Such competent authority shall ensure, in accordance with the laws and regulations of its Country, that the person concerned not be treated unfavourably solely on account of non-compliance of such person with such administrative guidance.
3. Such competent authority shall, in accordance with the laws and regulations of its Country, provide to the person concerned in writing, upon the request of such person, the purposes and contents of the administrative guidance.
4. For the purposes of this Article, the term “administrative guidance” means guidance, recommendations, advice by a competent authority of either Government which require a person to do or refrain from doing any act but does not create, impose limitations on or in any way affect rights and obligations of such person in order to pursue administrative objectives.

## Article 8

### *Confidentiality*

1. Each Government shall undertake, in accordance with the laws and regulations of its Country, to observe the confidentiality of information provided by the other Government.
2. Notwithstanding paragraph 1 of this Article, the information provided under this Agreement may be transmitted to a third party subject to the prior written consent of the providing Government.
3. Nothing in this Agreement shall require any Government 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.
4. In the event of termination of this Agreement, the Countries agree that the provision of this Article shall continue to apply.

## Article 9

### *Taxation*

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Country under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Articles 3 and 8 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

## Article 10

### *General and Security Exceptions*

1. For the purposes of Chapters 2, 3, 4, 5, 6 and 7 other than Article 82, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 7 other than Article 82 and Chapter 8, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

## Article 11

### *Relation to Other Agreements*

1. The Countries reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Countries are parties.
2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

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

## Article 12

### *Implementing Agreement*

The Governments shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as “the Implementing Agreement”).

## Article 13

### *Joint Committee*

1. A Joint Committee shall be established under this Agreement.
2. The functions of the Joint Committee shall be:
  - (a) reviewing the implementation and operation of this Agreement;
  - (b) submitting a report to the Countries through the contact points referred to in Article 15 on the implementation and operation of this Agreement;
  - (c) considering and recommending to the Countries any amendments to this Agreement;
  - (d) supervising and coordinating the work of all Sub-Committees established under this Agreement;
  - (e) adopting:
    - (i) the Operational Procedures referred to in Chapter 3; and
    - (ii) any necessary decisions; and
  - (f) carrying out other functions as the Countries may agree.
3. The Joint Committee:
  - (a) shall be co-chaired by senior officials of the Governments, unless the Countries agree to convene the meeting at ministerial level; and
  - (b) may establish and delegate its responsibilities to Sub-Committees.
4. The Joint Committee shall establish its rules and procedures and financial arrangements.
5. The Joint Committee shall convene its inaugural meeting within one year after this Agreement enters into force. Its subsequent meetings shall be held at such frequency as the Countries may agree upon. The Joint Committee shall convene alternately in Japan and Malaysia, unless the Countries agree otherwise. Special meetings of the Joint Committee may be convened, within 30 days upon the request of either Country.

Article 14

*Sub-Committees*

The following Sub-Committees shall be established on the date of entry into force of this Agreement:

- (a) Sub-Committee on Trade in Goods;
- (b) Sub-Committee on Rules of Origin;
- (c) Sub-Committee on Customs Procedures;
- (d) Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures;
- (e) Sub-Committee on Sanitary and Phytosanitary Measures;
- (f) Sub-Committee on Investment;
- (g) Sub-Committee on Trade in Services;
- (h) Sub-Committee on Intellectual Property;
- (i) Sub-Committee on Improvement of Business Environment; and
- (j) Sub-Committee on Co-operation.

Article 15

*Communications*

Communications between the Countries on any matter relating to this Agreement shall be facilitated through the following contact points:

- (a) in the case of Japan, the Ministry of Foreign Affairs of Japan; and
- (b) in the case of Malaysia, the Ministry of Foreign Affairs of Malaysia.

**Chapter 2**

**Trade in Goods**

Article 16

*Definitions*

For the purposes of this Chapter:

- (a) the term “bilateral safeguard measure” means a bilateral safeguard measure provided for in paragraph 1 of Article 23;

- (b) the term “customs duty” means any customs or import duty and a charge of any kind, imposed in connection with the importation of a good, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Country or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Country’s law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, as may be amended, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as may be amended; or
  - (iii) fees or other charges commensurate with the cost of services rendered;
- (c) the term “customs value of goods” means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (d) the term “domestic industry” means the producers as a whole of the like or directly the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (e) the term “export subsidies” means export subsidies listed in Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as “the Agreement on Agriculture”);
- (f) the term “originating goods” means goods which qualify as originating goods under the provisions of Chapter 3;
- (g) the term “provisional bilateral safeguard measure” means a provisional bilateral safeguard measure provided for in subparagraph 9(a) of Article 23;
- (h) the term “serious injury” means a significant overall impairment in the position of a domestic industry; and
- (i) the term “threat of serious injury” means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

#### Article 17

##### *Classification of Goods*

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

Article 18

*National Treatment*

Each Country shall accord national treatment to the goods of the other Country in accordance with Article III of the GATT 1994.

Article 19

*Elimination of Customs Duties*

1. Except as otherwise provided for in this Agreement, each Country shall eliminate or reduce its customs duties on originating goods of the other Country in accordance with its Schedule in Annex 1.
2. Except as otherwise provided for in this Agreement, neither Country shall increase any customs duty on originating goods of the other Country from the rate to be applied in accordance with its Schedule in Annex 1.
3. On the request of either Country, the Countries shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

Article 20

*Customs Valuation*

For the purposes of determining the customs value of goods traded between the Countries, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as “the Agreement on Customs Valuation”), shall apply *mutatis mutandis*.

Article 21

*Export Subsidy*

Neither Country shall in accordance with the Agreement on Agriculture introduce or maintain any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

Article 22

*Non-tariff Measures*

Except as otherwise provided for in this Agreement, each Country shall not introduce or maintain any non-tariff measures on the importation of any good of the other Country or on the exportation or sale for export of any good destined for the other Country which are inconsistent with its obligations under the WTO Agreement.

## Article 23

*Bilateral Safeguard Measures*

1. Subject to the provisions of this Article, if an originating good of the other Country, as a result of the elimination or reduction of a customs duty in accordance with Article 19, is being imported into the territory of a Country in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat thereof, to a domestic industry of the latter Country, the latter Country may, as a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury and to facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or
- (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure set out in this paragraph is taken; and
  - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. Each Country shall not apply bilateral safeguard measures on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

- 3. (a) A Country may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Country in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as “the Agreement on Safeguards”).
- (b) The investigation referred to in subparagraph (a) shall in all cases be completed within one year following its date of initiation.

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

- (a) A Country shall immediately deliver a written notice to the other Country upon:
  - (i) initiating an investigation referred to in subparagraph 3(a) of this Article relating to serious injury, or threat thereof, and the reasons for it; and
  - (ii) taking a decision to apply or extend a bilateral safeguard measure.
- (b) The Country making the written notice referred to in subparagraph (a) shall provide the other Country with all pertinent information, which shall include:

- (i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its subheading or a more detailed level of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
    - (ii) in the written notice referred to in subparagraph (a)(ii), evidence of serious injury or threat thereof caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading or a more detailed level of the Harmonized System, a precise description of the bilateral safeguard measure, the proposed date of its introduction and its expected duration.
  - (c) A Country proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Country with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a) of this Article, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5 of this Article.
  - (d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of four years. However, in very exceptional circumstances, a bilateral safeguard measure may be maintained for up to a total maximum period of five years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Country maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.
  - (e) No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.
  - (f) Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the bilateral safeguard measure.
- 5.
- (a) A Country proposing to apply or extend a bilateral safeguard measure shall provide to the other Country mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.
  - (b) If the Countries are unable to agree on the compensation within 30 days after the commencement of the consultation pursuant to subparagraph 4(c) of this Article, the Country against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure.



- (c) The right of suspension provided for in subparagraph (b) shall not be exercised for the first 18 months that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article. The Country exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.
6. Nothing in this Chapter shall prevent a Country from applying safeguard measures to an originating good in accordance with:
- (a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or
  - (b) Article 5 of the Agreement on Agriculture.
7. Each Country shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to the bilateral safeguard measure.
8. Each Country shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measure.
9. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Country may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 1(a) or (b) of this Article pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.
- (b) The Country shall deliver a written notice to the other Country prior to applying a provisional bilateral safeguard measure. Consultations between the Countries on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is taken.
- (c) The duration of the provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 3 of this Article shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 4(d) of this Article.
- (d) Paragraph 2, subparagraph 4(f) and paragraphs 7 and 8 of this Article shall be applied *mutatis mutandis* to the provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 3(a) of this Article does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.
10. Written notice referred to in subparagraph 4(a) and subparagraph 9(b) of this Article and any other communication between the Countries shall be done in the English language.
11. The Countries shall review the provisions of this Article, if necessary, after 10 years of the date of entry into force of this Agreement.

Article 24

*Restrictions to Safeguard the Balance of Payments*

1. Nothing in this Chapter shall be construed to prevent a Country from taking any measure for balance-of-payments purposes. A Country taking such measure shall do so in accordance with the conditions established under Article XII and Section B of Article XVIII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.
2. Nothing in this Chapter shall preclude the use by a Country of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 25

*Sub-Committee on Trade in Goods*

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) discussing any issues related to this Chapter;
  - (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The Sub-Committee shall be:
  - (a) composed of representatives of the Governments; and
  - (b) co-chaired by officials of the Governments.

Article 26

*Co-operation in the Field of Automotive Industry*

The Countries shall co-operate, with the participation of their respective automotive industries, to further enhance competitiveness of the automotive industry in Malaysia.

## Chapter 3

### Rules of Origin

#### Article 27

#### *Definitions*

For the purposes of this Chapter:

- (a) the term “competent governmental authority” means the authority of each Country that is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry, and in the case of Malaysia, the Ministry of International Trade and Industry;
- (b) the term “customs authority” means the authority that, according to the legislation of each Country or a third State, is responsible for the administration and enforcement of its customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Malaysia, the Royal Malaysian Customs of the Ministry of Finance;
- (c) the term “exporter” means a person located in the territory of an exporting Country who exports a good from the territory of the exporting Country;
- (d) the terms “factory ships of the Country” and “vessels of the Country” respectively mean factory ships and vessels:
  - (i) which are registered in the Country;
  - (ii) which sail under the flag of the Country;
  - (iii) which are owned to an extent of at least 51 percent by nationals of the Country, or by a juridical person with its head office in the territory of the Country, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Country, and of which at least 51 percent of the equity interest is owned by nationals or juridical persons of the Country; and
  - (iv) of which at least 75 percent of the total of the master, officers and crew are nationals of the Countries or third States which are member countries of the ASEAN;
- (e) the term “fungible originating goods of a Country” or “fungible originating materials of a Country” respectively means originating goods or materials of a Country that are interchangeable for commercial purposes, whose properties are essentially identical;
- (f) the term “Generally Accepted Accounting Principles” means the recognised consensus or substantial authoritative support within a Country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be

measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

- (g) the term “importer” means a person who imports a good into the territory of the importing Country;
- (h) the term “indirect material” means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:
  - (i) fuel and energy;
  - (ii) tools, dies and moulds;
  - (iii) spare parts and goods used in the maintenance of equipment and buildings;
  - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
  - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (vi) equipment, devices and supplies used for testing or inspecting the goods;
  - (vii) catalysts and solvents; and
  - (viii) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;
- (i) the term “material” means a good that is used in the production of another good;
- (j) the term “originating material of a Country” means an originating good of a Country which is used in the production of another good in the territory of the Country, including that which is considered as an originating material of the Country pursuant to paragraph 1 of Article 29;
- (k) the term “packing materials and containers for shipment” means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 37;
- (l) the term “preferential tariff treatment” means the rate of customs duties applicable to an originating good of the exporting Country in accordance with paragraph 1 of Article 19; and
- (m) the term “production” means methods of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

## Article 28

*Originating Goods*

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Country where:

- (a) the good is wholly obtained or produced entirely in the territory of the Country, as defined in paragraph 2 of this Article;
- (b) the good is produced entirely in the territory of the Country exclusively from originating materials of the Country; or
- (c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the territory of the Country using non-originating materials.

2. For the purposes of subparagraph 1(a) of this Article, the following goods shall be considered as being wholly obtained or produced entirely in the territory of a Country:

- (a) live animals born and raised in the territory of the Country;
- (b) animals obtained by hunting, trapping, fishing gathering or capturing in the territory of the Country;
- (c) goods obtained from live animals in the territory of the Country;
- (d) plants and plant products harvested, picked or gathered in the territory of the Country;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken in the territory of the Country;
- (f) goods of sea-fishing and other goods taken by vessels of the Country from the sea outside the territorial sea of a Country;
- (g) goods produced on board factory ships of the Country outside the territorial sea of the Country from the goods referred to in subparagraph (f);
- (h) goods taken from the seabed or subsoil beneath the seabed outside the territorial sea of the Country, provided that the Country has rights to exploit such seabed or subsoil in accordance with the provisions of the United Nations Convention on the Law of the Sea;
- (i) articles collected in the territory of the Country which can no longer perform their original purpose in the territory of the Country nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
- (j) scrap and waste derived from manufacturing or processing operations or from consumption in the territory of the Country and fit only for disposal or for the recovery of raw materials;

- (k) parts or raw materials recovered in the territory of the Country from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
  - (l) goods obtained or produced in the territory of the Country exclusively from the goods referred to in subparagraphs (a) through (k).
3. For the purposes of subparagraph 1(c) of this Article, the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.
4. (a) For the purposes of subparagraph 1(c) of this Article, the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b) of this Article, is not less than the percentage specified by the rule for the good.
- (b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$\text{Q.V.C.} = - \frac{\text{F.O.B.} - \text{V.N.M.}}{\text{F.O.B.}} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 5 of this Article, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) of this Article shall be the value:
- (a) adjusted to the first ascertainable price paid for the good from the buyer to the producer of the good, if there is free-on-board value of a good, but it is unknown and cannot be ascertained; or
  - (b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of the good.
6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of this Article, the value of a non-originating material used in the production of the good in the territory of a Country:
- (a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the territory of the Country where the producer of the good is located; or

- (b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the territory of the Country, but may exclude all the costs incurred in the territory of the Country in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the territory of the Country.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of this Article in determining whether the good qualifies as an originating good of a Country, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Country which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a) of this Article, in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

#### Article 29

##### *Accumulation*

1. For the purposes of determining whether a good qualifies as an originating good of a Country, an originating good of the other Country which is used as a material in the production of the good in the territory of the former Country may be considered as an originating material of the former Country.

2. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of Article 28 in determining whether the good qualifies as an originating good of a Country, the value of a non-originating material produced in the territory of either Country and to be used in the production of the good may be limited to the value of non-originating materials used in the production of such non-originating material, provided that the good qualifies as an originating good of that Country under subparagraph 1(c) of Article 28.

#### Article 30

##### *De Minimis*

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

#### Article 31

##### *Non-qualifying Operations*

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 solely by reason of:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;
- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles; or
- (g) any combination of operations referred to in subparagraphs (a) through (f).

#### Article 32

##### *Consignment Criteria*

1. An originating good of the other Country shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from the territory of the other Country; or
- (b) transported through third States for the purpose of transit or temporary storage in warehouses in such third States, provided that it does not undergo operations other than unloading, reloading or any other operation to preserve it in good condition.

2. If the originating good of the other Country does not meet the consignment criteria referred to in paragraph 1 of this Article, that good shall not be considered as the originating good of the other Country.

#### Article 33

##### *Unassembled or Disassembled Goods*

1. Where a good satisfies the requirements of the relevant provisions of Articles 28 through 31 and is imported into the territory of a Country from the territory of the other Country in a disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Country.

2. A good assembled in the territory of a Country from unassembled or disassembled materials, which were imported into the territory of the Country and classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Country, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 28 through 31 had each of the non-originating materials among the unassembled or disassembled materials been imported into the territory of the Country separately and not as an unassembled or disassembled form.



Article 34

*Fungible Goods and Materials*

1. For the purposes of determining whether a good qualifies as an originating good of a Country, where fungible originating materials of the Country and fungible non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the territory of the Country.

2. Where fungible originating goods of a Country and fungible non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the territory of the Country where they were commingled other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the territory of the Country.

Article 35

*Indirect Materials*

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Country where a good is produced.

Article 36

*Accessories, Spare Parts and Tools*

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and
- (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials of a Country where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 37

*Packaging Materials and Containers for Retail Sale*

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If the good is subject to a qualifying value content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Country where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 38

*Packing Materials and Containers for Shipment*

Packing materials and containers for shipment shall be:

- (a) disregarded in determining whether all the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and
- (b) without regard to where they are produced, considered to be originating materials of a Country where the good is produced, in calculating the qualifying value content of the good.

Article 39

*Claim for Preferential Tariff Treatment*

1. The importing Country shall require a certificate of origin for an originating good of the exporting Country from importers who claim the preferential tariff treatment for the good.
2. Notwithstanding paragraph 1 of this Article, the importing Country shall not require a certificate of origin from importers for:
  - (a) an importation of a consignment of originating goods of the exporting Country whose aggregate customs value does not exceed 1000 United States dollars or its equivalent amount in the Country's currency, or such higher amount as it may establish; or
  - (b) an importation of an originating good of the exporting Country, for which the importing Country has waived the requirement for a certification of origin.
3. Where an originating good of the exporting Country is imported through third States, the importing Country may require importers, who claim the preferential tariff treatment for the good, to submit:
  - (a) a copy of through bill of lading; or 38
  - (b) a certificate or any other information given by the customs authorities of such third States or other relevant entities, which evidences that it has not undergone operations other than unloading, reloading or any other operation to preserve it in good condition in those third States.

Article 40

*Certificate of Origin*

1. The certificate of origin referred to in paragraph 1 of Article 39 shall be issued by the competent governmental authority of the exporting Country on request having been made in

writing by the exporter or its authorised agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Country may designate other entities or bodies to be responsible for the issuance of the certificate of origin, under the authorisation given in accordance with the applicable laws and regulations of the exporting Country.

3. Where the competent governmental authority of the exporting Country designates other entities or bodies to carry out the issuance of the certificate of origin, the exporting Country shall notify in writing the other Country of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Countries shall establish a format of the certificate of origin in the English language in the Operational Procedures referred to in Article 50.

5. The certificate of origin shall be completed in the English language.

6. The issued certificate of origin shall be applicable to a single importation of an originating good of the exporting Country into the territory of the importing Country and be valid for 12 months from the date of issuance.

7. Where the exporter is not the producer of a good, the exporter may request a certificate of origin on the basis of:

- (a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or
- (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.

8. The certificate of origin shall be issued only after the exporter who requests a certificate of origin, or the producer of a good in the territory of the exporting Country referred to in subparagraph 7(b) of this Article, proves to the competent governmental authority or its designees that the good to be exported qualifies as an originating good of the exporting Country.

9. The competent governmental authority of the exporting Country shall provide the other Country with specimen signatures and impressions of stamps used in the offices of the competent governmental authority of the exporting Country or its designees.

10. Each Country shall ensure that the competent governmental authority or its designees shall keep a record of the certificates of origin issued for a period of five years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Country.

#### Article 41

##### *Advance Rulings*

The importing Country shall endeavour to, prior to the importation of a good, issue a written advance ruling as to whether the good to be imported qualifies as an originating good of the exporting Country to importers of the good of the exporting Country or their authorised

agents and exporters, and producers of the good in the territory of the exporting Country or their authorised agents, where a written application is made with all the necessary information.

## Article 42

### *Obligations regarding Exportations*

Each Country shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the territory of the exporting Country referred to in subparagraph 7(b) of Article 40:

- (a) shall notify in writing the competent governmental authority of the exporting Country or its designees without delay when he knows that such good does not qualify as an originating good of the exporting Country; and
- (b) shall keep the records relating to the origin of a good for five years after the date on which the certificate of origin was issued.

## Article 43

### *Request for Checking of Certificate of Origin*

1. For the purposes of determining whether a good imported from the territory of the other Country under preferential tariff treatment qualifies as an originating good of the other Country, the relevant authority of the importing Country may request information relating to the origin of the good from the competent governmental authority of the exporting Country on the basis of a certificate of origin, where it has reasonable doubt as to the authenticity of the certificate of origin or the accuracy of the information included in the certificate of origin.

Note: The term “relevant authority of the importing Country” referred to in Articles 43 through 46 means:

- (a) in the case of Japan, the customs authority; and
  - (b) in the case of Malaysia, the Ministry of International Trade and Industry.
2. For the purposes of paragraph 1 of this Article, the competent governmental authority of the exporting Country shall, in accordance with its laws and regulations, provide the information requested within a period of three months from the date of receipt of the request.

If the relevant authority of the importing Country considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the relevant authority of the importing Country, the competent governmental authority of the exporting Country shall, in accordance with its laws and regulations, provide the information requested within a period of two months from the date of receipt of the request.

3. For the purposes of paragraph 2 of this Article, the competent governmental authority of the exporting Country may request the exporter to whom a certificate of origin has been issued, or the producer of the good in the territory of the exporting Country referred to in subparagraph 7(b) of Article 40, to provide the former with the information requested.

## Article 44

*Verification Visit*

1. If the relevant authority of the importing Country is not satisfied with the outcome of the request for checking pursuant to Article 43, it may request the exporting Country:

- (a) to collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by its competent governmental authority along with the relevant authority of the importing Country to the premises of the exporter to whom a certificate of origin has been issued, or the producer of the good in the territory of the exporting Country referred to in subparagraph 7(b) of Article 40; and
- (b) during or after the visit, to provide information relating to the origin of the good in the possession of the competent governmental authority or its designee.

2. When requesting the exporting Country to conduct a visit pursuant to paragraph 1 or 6 of this Article, the importing Country shall deliver a written communication with such request to the exporting Country at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the latter Country. The competent governmental authority of the exporting Country shall request the written consent of the exporter, or the producer of the good in the territory of the exporting Country whose premises are to be visited.

3. The communication referred to in paragraph 2 of this Article shall include:

- (a) the identity of the relevant authority issuing the communication;
- (b) the name of the exporter, or the producer of the good in the territory of the exporting Country whose premises are requested to be visited;
- (c) the proposed date and place of the visit;
- (d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and
- (e) the names and titles of the officials of the relevant authority of the importing Country to be present during the visit.

4. The exporting Country shall respond in writing to the importing Country, within 30 days of the receipt of the communication referred to in paragraph 2 of this Article, if it accepts or refuses to conduct a visit requested pursuant to paragraph 1 or 6 of this Article.

5. The competent governmental authority of the exporting Country shall, in accordance with its laws and regulations, provide within 45 days or any other mutually agreed period from the last day of the visit, to the relevant authority of the importing Country the information obtained pursuant to paragraph 1 or 6 of this Article.

6. (a) In cases where the relevant authority of the importing Country considers as exceptional, that relevant authority may, before or during the request for checking referred to in Article 43, put forward the exporting Country a request referred to in paragraph 1 of this Article.

- (b) Where the request referred to in subparagraph (a) is made, Article 43 shall not be applied.

#### Article 45

##### *Determination of Origin and Preferential Tariff Treatment*

1. The relevant authority of the importing Country may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Country or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent governmental authority of the exporting Country shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the relevant authority of the importing Country except where the certificate has been returned to the competent governmental authority. The relevant authority of the importing Country may determine that the good does not qualify as an originating good of the exporting Country and may deny preferential tariff treatment when it receives the notification.

3. The relevant authority of the importing Country may determine that a good does not qualify as an originating good of the exporting Country and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Country:

- (a) where the competent governmental authority of the exporting Country fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 5 of Article 44;
- (b) where the exporting Country refuses to conduct a visit, or that Country fails to respond to the communication referred to in paragraph 2 of Article 44 within the period referred to in paragraph 4 of Article 44; or
- (c) where the information provided to the relevant authority of the importing Country pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Country.

4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the relevant authority of the importing Country shall provide the competent governmental authority of the exporting Country with a written determination of whether or not the good qualifies as an originating good of the exporting Country, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Country shall inform such determination by the relevant authority of the importing Country to the exporter, or the producer of the good in the territory of the exporting Country, whose premises were subject to the visit referred to in Article 44.

#### Article 46

##### *Confidentiality*

1. Each Country shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the relevant authority of the importing Country pursuant to this Chapter:

- (a) may only be used by such authority for the purposes of this Chapter; and
- (b) shall not be used by the importing Country in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Country and provided to the former Country, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Country.

Article 47

*Penalties and Measures against False Declaration*

1. Each Country shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and its producers of the goods in the territory of the exporting Country referred to in subparagraph 7(b) of Article 40, for providing false declaration or documents to its competent governmental authority or its designees prior to the issuance of certificate of origin.

2. Each Country shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and its producers of the goods in the territory of the exporting Country referred to in subparagraph 7(b) of Article 40, for failing to notify in writing to the competent governmental authority of the exporting Country or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Country.

Article 48

*Miscellaneous*

1. Communications between the importing Country and the exporting Country shall be conducted in the English language.

2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, any applicable valuation method under the Generally Accepted Accounting Principles in the territory of the exporting Country shall be applied.

Article 49

*Sub-Committee on Rules of Origin*

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Rules of Origin (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:

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

- (ii) any amendments to Annexes 2 and 3, proposed by either Country;  
and
  - (iii) the Operational Procedures referred to in Article 50;
  - (b) discussing any issues related to this Chapter;
  - (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments; and
  - (b) co-chaired by officials of the Governments.

#### Article 50

##### *Operational Procedures*

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities of the Countries defined in Article 27 and the relevant authorities of the Countries shall implement their functions under this Chapter.

### **Chapter 4**

#### **Customs Procedures**

#### Article 51

##### *Scope*

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Countries.
2. This Chapter shall be implemented by the Countries in accordance with the laws and regulations of each Country and within the competence and available resources of their respective customs authorities.

#### Article 52

##### *Definitions*

For the purposes of this Chapter:



- (a) the term “customs authority” means the customs authority as defined in subparagraph (b) of Article 27; and
- (b) the term “customs laws” means such laws and regulations administered and enforced by the customs authority of each Country concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Country.

### Article 53

#### *Transparency*

1. Each Country shall ensure that all relevant information of general application pertaining to its customs laws is publicly available in the Country.
2. At the request of the interested person of the Countries, each Country shall endeavour to provide information relating to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Country shall supply not only the information specifically requested but also any other pertinent information relating to customs matters which it considers the interested person should be made aware of.

### Article 54

#### *Customs Clearance*

1. Both Countries shall endeavour to apply customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance of goods traded between the Countries, each Country shall:
  - (a) make use of information and communications technology;
  - (b) simplify its customs procedures;
  - (c) harmonise its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and
  - (d) promote co-operation, wherever appropriate, between:
    - (i) its customs authority and other national authorities; and
    - (ii) its customs authority and the trading communities of the Country.
3. Each Country shall provide affected parties in its territory with accessible processes of administrative and judicial review in relation to the action taken by the Country.

## Article 55

*Temporary Admission and Goods in Transit*

1. Each Country shall continue to facilitate the procedures for the temporary admission of goods traded between the Countries in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, as may be amended (hereinafter referred to in this Article as “the A.T.A. Convention”).
2. Each Country shall continue to facilitate customs clearance of goods in transit from or to the territory of the other Country in accordance with paragraph 3 of Article V of the GATT 1994.
3. The Countries shall endeavour to promote, through seminars and courses, the use of A.T.A. carnets pursuant to the A.T.A. Convention for the temporary admission of goods and the facilitation of customs clearance of goods in transit in the territories of the Countries or third States.
4. For the purposes of this Article, the term “temporary admission” means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for reexportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

## Article 56

*Co-operation and Exchange of Information*

1. The Countries shall co-operate and exchange information with each other on customs matters.
2. The co-operation and exchange of information on customs matters shall be implemented as provided for in the Implementing Agreement.

## Article 57

*Capacity Building*

The area of co-operation pursuant to paragraph 2 of Article 56 shall include capacity building, such as training, technical assistance and exchange of experts.

## Article 58

*Sub-Committee on Customs Procedures*

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Customs Procedures (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) identifying areas to be improved for facilitating trade between the Countries;
  - (c) reporting the findings of the Sub-Committee to the Joint Committee; and

- (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.

## **Chapter 5**

### **Technical Regulations, Standards and Conformity Assessment Procedures**

#### Article 59

##### *Scope and Objectives*

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as “TBT Agreement”), and adopted by the Countries that may directly or indirectly affect trade in goods between the Countries. It shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies and sanitary and phytosanitary measures as defined in the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as “SPS Agreement”).
2. The Countries shall develop co-operation and conduct consultation in the field of technical regulations, standards and conformity assessment procedures.
3. The Countries, recognising the rights and obligations as referred to in Article 60, shall establish a framework under this Chapter for joint efforts of the Countries to ensure that technical regulations do not create unnecessary obstacles to the trade in goods between the Countries and for possible mutual recognition arrangements between the Countries in the most appropriate and cost-effective manner.

#### Article 60

##### *Reaffirmation of Rights and Obligations*

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

#### Article 61

##### *Technical Regulations*

1. The Countries shall, where appropriate and consistent with their rights and obligations under the TBT Agreement, endeavour to work towards harmonisation of their respective technical regulations based on international standards, recommendations and guidelines.

2. Each Country shall give positive consideration to accepting as equivalent technical regulations of the other Country, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. A Country shall, upon the request of the other Country and where appropriate, explain the reasons why it has not accepted a technical regulation of the other Country as equivalent to its own.

4. The Countries may co-operate with each other in the context of their participation in international standardising bodies to ensure that international standards developed within such organisations that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to trade.

#### Article 62

##### *Acceptance of Results of Conformity Assessment Procedures*

1. Each Country shall ensure, whenever possible, that results of the conformity assessment procedures in the territory of the other Country are accepted, even when those procedures differ from its own, provided it is satisfied that the procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures. The Countries recognise that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding with regard to such matters as provided for in paragraphs 1.1 and 1.2 of Article 6 of the TBT Agreement.

2. A Country shall, upon the request of the other Country and where appropriate, explain the reasons why it has not accepted the results of conformity assessment procedures in the territory of the other Country.

#### Article 63

##### *Mutual Recognition Arrangements*

1. Each Country, upon the request of the other Country, shall enter into negotiations for possible mutual recognition arrangements on the results of conformity assessment procedures, conducted by conformity assessment bodies of the exporting Country to assess conformity to importing Country's requirements, in the sectors which both Countries agree upon.

2. With a view to facilitating the negotiation for possible mutual recognition arrangements referred to in paragraph 1 of this Article:

- (a) the Countries shall take into consideration that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures;
- (b) the Countries shall, recognising the existence of differences in the structure and operation of conformity assessment procedures in their respective territories, endeavour to make compatible the conformity assessment procedures to the greatest extent practicable; and
- (c) in order to build confidence in the reliability of results of conformity assessment procedures conducted by conformity assessment bodies of the other Country, a Country may consult with the other Country, as appropriate, on such matters as the technical competence of the conformity assessment bodies of the other Country.

Article 64

*Co-operation*

1. Both Countries shall develop co-operation in the field of technical regulations, standards and conformity assessment procedures. Such co-operation may include:

- (a) joint studies, seminars and symposia;
- (b) establishing or improving of infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;
- (c) where appropriate, effectively using the existing framework for mutual recognition developed by relevant regional and international bodies;
- (d) research and development;
- (e) exchange of information;
- (f) exchange of Government officials for training purposes; and
- (g) technical assistance and co-operation in connection with the Countries' compliance with the TBT Agreement.

2. The implementation of this Article shall be subject to the availability of funds and the applicable laws and regulations of each Country.

Article 65

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

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be:

- (a) exchanging information on technical regulations, standards and conformity assessment procedures;
- (b) exchanging lists of conformity assessment bodies registered or accredited by relevant registration or accreditation authorities of each Country;
- (c) reviewing and monitoring the implementation and operation of this Chapter;
- (d) undertaking consultation on issues related to technical regulations, standards and conformity assessment procedures;
- (e) discussing any issues related to this Chapter;
- (f) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and

- (g) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall convene its inaugural meeting within one year after this Agreement enters into force and subsequently meet at such times as may be agreed by the Countries. The Sub-Committee shall meet at such venues as may be agreed by the Countries.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the Governments.

Article 66

*Enquiry Points*

Each Government shall designate an enquiry point to answer all reasonable enquiries from the other Government regarding technical regulations, standards and conformity assessment procedures and, if appropriate, provide the other Government with other relevant information which it considers the other Government should be made aware of.

Article 67

*Non-Application of Chapter 13*

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

**Chapter 6**

*Sanitary and Phytosanitary Measures*

Article 68

*Scope*

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to in this Chapter as “SPS”) measures under the SPS Agreement, that may, directly or indirectly, affect trade in goods between the Countries.

Article 69

*Reaffirmation of Rights and Obligations*

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

## Article 70

*Sub-Committee on Sanitary and Phytosanitary Measures*

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:

- (a) exchanging information on such matters as occurrences of SPS incidents in the territories of the Countries and third States, and change or introduction of SPS related regulations and standards of the Countries, which may, directly or indirectly, affect trade in goods between the Countries;
- (b) notifying to either Country of information on potential SPS risks recognised by the other Country;
- (c) undertaking science-based consultation to identify and address specific issues that may arise from the application of SPS measures with the objective to achieve mutually acceptable solutions;
- (d) reviewing the implementation and operation of this Chapter;
- (e) reporting the findings of the Sub-Committee to the Joint Committee; and
- (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.

2. Both Countries, through the Sub-Committee, shall cooperate in the areas of SPS measures including capacity building, technical assistance and exchange of experts subject to the availability of appropriated funds and the applicable laws and regulations of each Country.

3. The Sub-Committee shall convene its inaugural meeting within one year after this Agreement enters into force and subsequently meet at such times as may be agreed by the Countries. The Sub-Committee shall meet at such venues as may be agreed by the Countries.

4. The Sub-Committee shall be:

- (a) composed of representatives of the Governments; and
- (b) co-chaired by officials of the Governments.

5. The Sub-Committee may, if necessary, establish *ad hoc* technical working groups as its subsidiary bodies.

## Article 71

## Enquiry Points

Each Government shall designate an enquiry point to answer all reasonable enquiries from the other Government regarding SPS measures referred to in Article 68 and, if appropriate, provide the other Government with the relevant information.

Article 72

*Non-Application of Chapter 13*

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

**Chapter 7**

**Investment**

Article 73

*Scope*

1. This Chapter shall apply to measures adopted or maintained by a Country relating to:
  - (a) investors of the other Country; and
  - (b) investments of investors of the other Country in the former Country.
2. In the event of any inconsistency between this Chapter and Chapter 8:
  - (a) with respect to matters covered by Articles 75, 76 and 79, Chapter 8 shall prevail to the extent of inconsistency; and
  - (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.
3. Nothing in this Chapter shall impose any obligation on either Country regarding measures pursuant to immigration laws and regulations.

Note: In respect of Malaysia, measures referred to in this paragraph include those pursuant to the immigration policies endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia.

Article 74

*Definitions*

For the purposes of this Chapter:

- (a) an enterprise is:
  - (i) “owned” by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
  - (ii) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;
- (b) the term “enterprise of a Country” means any legal entity duly constituted or organised under the law of a Country, whether for profit or otherwise, and



whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;

- (c) the term “financial services” shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;
- (d) the term “freely usable currency” means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets as defined under the Articles of Agreement of the International Monetary Fund, as may be amended;
- (e) the term “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor of a Country, including:
  - (i) an enterprise;
  - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
  - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
  - (v) claims to money and claims to any performance under contract having a financial value;
  - (vi) intellectual property rights, including copyrights, patent rights, and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new plant varieties, trade names, indications of source or geographical indications, undisclosed information, which are conferred pursuant to the laws and regulations of each Country;
  - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and
  - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as mortgages, liens and pledges;

Investments also include profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments. A change in the form in which assets are invested does not affect their character as investments.

Note 1: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

Note 2: Whether a particular right conferred pursuant to laws and regulations or contracts, as referred to in subparagraph (vii),

has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Country. For greater certainty, the foregoing is without prejudice to whether any asset associated with such right has the characteristics of an investment.

Note 3: Investments do not include an order or judgment entered in a judicial or administrative action.

- (f) the term “investor of a Country” means a natural person of a Country or an enterprise of a Country, except branch of an enterprise of a third State which is located in the Country;
- (g) the term “natural person of a Country” means a natural person who resides in a Country or elsewhere and who under the law of the Country:
  - (i) in respect of Japan, is a national of Japan; and
  - (ii) in respect of Malaysia, is a national of Malaysia or has the right of permanent residence in Malaysia; and
- (h) the term “portfolio investment” means:
  - (i) shares, stocks or other forms of equity participation in an enterprise traded in a securities exchange, which amount to less than 10 percent of the total capital of such enterprise; or
  - (ii) debt securities, such as bonds, notes and financial derivatives, the original maturity of which is less than 12 months, unless such debt securities are arising out of intracompany debt transactions between an investor of a Country and an enterprise in the other Country of which 10 percent or more of the shares, stocks, or other forms of equity are directly or indirectly owned by the investor, or which is directly or indirectly controlled by the investor.

## Article 75

### *National Treatment*

1. Each Country shall accord to investors of the other Country and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as “investment activities”).

2. This Article shall not apply to the establishment, acquisition and expansion of portfolio investments.

3. Notwithstanding the provisions of paragraph 1 of this Article, each Country may prescribe special formalities in connection with the establishment of investments by investors of the other Country in the former Country such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

Article 76

*Most-Favoured-Nation Treatment*

Each Country shall accord to investors of the other Country and to their investments treatment no less favourable than that it accords in like circumstances to investors of a third State and to their investments, with respect to investment activities.

Article 77

*General Treatment*

Each Country shall accord to investments of investors of the other Country fair and equitable treatment and full protection and security.

Article 78

*Access to the Courts of Justice*

Each Country shall in that Country accord to investors of the other Country treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a third State with respect to access to its courts of justice and administrative tribunals and agencies, both in pursuit and in defence of such investors' rights.

Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures.

Article 79

*Prohibition of Performance Requirements*

1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, *mutatis mutandis*.
2. The Countries shall enter into further consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement.
3. The aim of consultations referred to in paragraph 2 of this Article may include the review of reservations relating to prohibition of performance requirements.

Article 80

*Reservations and Exceptions*

1. Articles 75 and 76 and paragraph 1 of Article 79 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by the following, as set out in sectors, sub-sectors or activities listed in Annex 4 and indicated with an asterisk (“\*“):
    - (i) the central government of a Country; or

- (ii) a prefecture of Japan or a state of Malaysia, as set out in Annex 4 in accordance with paragraph 5 of this Article;
  - (b) any existing non-conforming measure that is maintained by a local government of a Country other than prefectures and states referred to in subparagraph (a)(ii);
  - (c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b); or
  - (d) an amendment or modification of any measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the level of conformity of the measure, as it existed immediately before the amendment or modification, with Articles 75 and 76 and paragraph 1 of Article 79.
2. Each Country reserves the right to adopt or maintain any measure not conforming with the obligations imposed by Articles 75 and 76 and paragraph 1 of Article 79, for sectors, sub-sectors or activities listed in Annex 4 other than those referred to in paragraph 1 of this Article.
3. Any amendment or modification of an existing measure or adoption of a new measure for sectors, sub-sectors or activities referred to in paragraph 2 of this Article, shall not be more restrictive to existing investors and existing investments than the measure applied to such investors and investments immediately before such amendment or modification or adoption, unless such sectors, subsectors or activities are indicated with the symbol “+” in Annex 4.
4. For the purposes of this Article:
- (a) the terms “existing investors” and “existing investments” mean respectively investors whose investments are present in a Country, and investments that are present in a Country, immediately before the modification or amendment of existing measures, or adoption of new measures; and
  - (b) any expansion or diversification of existing investments by existing investors after the modification or amendment of existing measures or adoption of new measures shall not be regarded as existing investments to the extent of such expansion or diversification.
5. Each Country shall set out in Annex 4, within six months after the entry into force of this Agreement, any existing non-conforming measure, with an asterisk (“\*”), maintained by a prefecture or a state as referred to in subparagraph 1(a)(ii) of this Article and shall notify thereof the other Country by a diplomatic note.
6. Neither Country may, under any measure adopted pursuant to paragraph 2 of this Article after the entry into force of this Agreement, require an investor of the other Country, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.
7. In cases where a Country makes an amendment or modification of existing measures or adopts new measures with respect to sectors, sub-sectors or activities listed in Annex 4:

- (a) that Country shall notify the other Country to the extent possible, the amendment or modification or new measures, and whenever possible prior to implementation, if not, as soon as possible thereafter; and
- (b) that Country upon the request by the other Country shall hold consultation in good faith with that other Country with a view to achieving mutual satisfaction.

8. Notwithstanding the provisions of this Article, each Country may, in exceptional financial, economic or industrial circumstances, adopt exceptional measure inconsistent with Articles 75 and 76 and paragraph 1 of Article 79 in the sectors, sub-sectors or activities listed in Annex 4 with an asterisk (“\*”), provided that such Country shall, to the extent possible prior to the entry into force of the measure, or as soon as possible thereafter:

- (a) notify the other Country of the elements of the measure; and
- (b) hold, upon the request by the other Country, consultations in good faith with the other Country with a view to achieving mutual satisfaction and take appropriate action thereafter.

9. Each Country shall endeavour, where appropriate, to reduce or eliminate the reservations specified in Annex 4.

10. Articles 75, 76 and 79 shall not apply to any measure that a Country adopts or maintains with respect to government procurement.

11. Articles 75 and 76 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to as “the TRIPS Agreement”), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

## Article 81

### *Expropriation and Compensation*

1. Neither Country shall take any measures of or equivalent to expropriation or nationalisation against the investments in that Country of investors of the other Country (hereinafter referred to in this Chapter as “expropriation”) except:

- (a) for a lawful or public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law; and
- (d) upon payment of prompt, adequate and effective compensation.

2. Such compensation shall be equivalent to the fair market value of the expropriated investments:

- (a) at the time when or immediately before the expropriation was publicly announced; or
- (b) when the expropriation occurred,

whichever is the earlier.

3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

4. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be:

- (a) effectively realisable;
- (b) freely transferable; and
- (c) freely convertible at the market exchange rate prevailing on the date of the expropriation into the currency of the Country of the investors concerned and freely usable currencies.

5. This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.

#### Article 82

##### *Protection from Strife*

1. Each Country shall accord to investors of the other Country that have suffered loss or damage relating to their investment activities in the former Country due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the former Country, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a third State, whichever is more favourable to the investors of the other Country.

2. Any payments made pursuant to paragraph 1 of this Article shall be effectively realisable, freely convertible and freely transferable.

#### Article 83

##### *Transfers*

1. Each Country shall allow all transfers to be made into and out of that Country freely and without delay in any freely usable currency. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, interest, fees and other current incomes accruing from investments of the investors of the other Country;
- (c) proceeds from the total or partial sale or liquidation of investments of investors of the other Country;
- (d) payments made under a contract including loan payments in connection with investments;

- (e) earnings, remuneration and other compensation of personnel from the other Country who work in connection with investments in the former Country;
- (f) payments made in accordance with Articles 81 and 82; and
- (g) payments arising out of the settlement of a dispute under Article 85.

2. Each Country shall allow transfers referred to in paragraph 1 of this Article to be made in a freely usable currency at the market rate of exchange prevailing on the date of the transfer.

3. Subject to paragraphs 1 and 2 of this Article, each Country shall accord to the transfer referred to in paragraph 1 of this Article treatment no less favourable than that accorded to the transfer originating from investments made by investors of any third State.

4. Notwithstanding paragraphs 1 and 2 of this Article, a Country may delay or prevent a transfer referred to in paragraph 1 of this Article through the equitable, non-discriminatory and good-faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings;  
or
- (e) obligations of investors arising from social security and public retirement plans.

#### Article 84

##### *Subrogation*

1. If a Country or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment of that investor within the other Country, the other Country shall:

- (a) recognise the assignment, to the former Country or its designated agency, of any right or claim of the investor that formed the basis of such payment; and
- (b) recognise the right of the former Country or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Articles 81, 82 and 83 shall apply *mutatis mutandis* as regards payment to be made to the Country or its designated agency mentioned in paragraph 1 of this Article by virtue of such assignment of right or claim, and the transfer of such payment.

## Article 85

*Settlement of Investment Disputes between a Country and an Investor of the Other Country*

1. For the purposes of this Chapter, an “investment dispute” is a dispute between a Country and an investor of the other Country that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of the other Country.

Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as “disputing investor”) from seeking administrative or judicial settlement within the Country that is a party to the investment dispute (hereinafter referred to in this Article as “disputing Country”).

3. An investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

4. If the investment dispute cannot be settled through such consultations within five months from the date on which the disputing investor requested for the consultations in writing and if the disputing investor concerned has not submitted the investment dispute for resolution under administrative or judicial settlement, the disputing investor may:

- (a) submit the investment dispute to the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as “KLRCA”) for settlement by conciliation or arbitration;
- (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965, as may be amended;
- (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; or
- (d) if agreed with the disputing Country, submit the investment dispute to arbitration in accordance with other arbitration rules.

5. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.

6. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 of this Article shall give to the disputing Country written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Country at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem



clearly, including the provisions of this Chapter alleged to have been breached; and

- (c) the dispute settlement procedures set forth in paragraph 4 of this Article which the disputing investor will seek.

7. Each Country hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration chosen by the disputing investor as provided for in paragraph 4 of this Article. If more than three years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated.

8. Notwithstanding paragraph 4 of this Article and subject to the laws of the disputing Country, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or a court of justice.

9. Unless the disputing investor and the disputing Country (hereinafter referred to as "the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 4(a), (b) and (c) of this Article shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Country fails to appoint an arbitrator within 60 days from the date on which the investment dispute was submitted to arbitration, the Director of KLRCA, in the case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the KLRCA or ICSID Panel of Arbitrators respectively subject to the requirement of paragraphs 10 and 11 of this Article.

10. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Country, nor have his or her usual place of residence in either of the Countries, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

11. In the case of arbitration referred to in subparagraphs 4(a), (b) and (c) of this Article, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Director of KLRCA, in the case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of ICSID, in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, may not appoint as arbitrator any person whose nationality is indicated by any of the disputing parties.

12. Unless the disputing parties agree otherwise, the arbitration shall be held in the disputing Country.

13. On written notice to the disputing parties, the Country other than the disputing Country may make submission to the arbitral tribunal on a question of interpretation of this Agreement.

14. The award shall include:

- (a) a judgment whether or not there has been a breach by the disputing Country of any rights conferred by this Chapter in respect of the disputing investor and its investments; and
- (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:
  - (i) payment of monetary damages and applicable interest; and
  - (ii) restitution of property, in which case the award shall provide that the disputing Country may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

15. The award rendered in accordance with paragraph 14 of this Article shall be final and binding upon the disputing parties. The disputing Country shall carry out without delay the provisions of any such award and provide in the disputing Country for the enforcement of such award in accordance with its relevant laws and regulations.

16. Neither Country shall, in respect of an investment dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 4 of this Article, give diplomatic protection, or bring an international claim before another forum, unless the other Country shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

17. This Article shall not apply to any dispute arising between a Country and an investor of the other Country on any right or privileges conferred or created by Articles 75 and 79.

18. An investor of a Country whose investments are not made in compliance with the laws and regulations of the other Country which are not inconsistent with this Agreement:

- (a) shall not be entitled to submit an investment dispute to conciliation or arbitration referred to in paragraph 4 of this Article; and 70
- (b) shall not resort to dispute settlement procedures under Chapter 13 as a means to settle the investment disputes between the investor and the other Country.

Note: For the purposes of this paragraph, in respect of Malaysia, investments that are not made in compliance with the laws and regulations include investments that are not made in compliance with national policies endorsed by the Cabinet and announced and made publicly available in a written form by the Government of Malaysia.

## Article 86

### *Facilitation of Movement of Investors*

1. Subject to its immigration laws and regulations relating to entry, stay and authorisation to work, each Country shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Country, for the purpose of establishing, developing, administering or advising on the operation in the former Country of an investment to which they, or an

enterprise of the other Country that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.

Note: In respect of Malaysia, its obligations under this paragraph are also subject to the immigration policies, relating to entry, stay and authorisation to work, endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia.

2. Each Country shall, to the extent possible, make publicly available, requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Country who has been granted entry and temporary stay with respect to an investment. Each Country shall endeavour to facilitate the procedures to the extent possible, in accordance with its laws and regulations.

#### Article 87

##### *General and Security Exceptions*

In cases where a Country takes any measure pursuant to Article 10 that does not conform with the obligations of the provisions of this Chapter other than the provisions of Article 82, that Country shall so notify the other Country, to the extent possible prior to the entry into force of the measure, or if not, as soon thereafter as possible.

#### Article 88

##### *Temporary Safeguard Measures*

1. A Country may adopt or maintain measures not conforming with its obligations under Article 75 relating to cross-border capital transactions and Article 83:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 of this Article:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended, as applicable;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;
- (c) shall be temporary and shall be eliminated as soon as conditions permit or be phased out progressively as the situation specified in paragraph 1 of this Article improves; and
- (d) shall be promptly notified to the other Country.

3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Country as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 89

*Prudential Measures*

Notwithstanding any other provisions of this Chapter, a Country shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Country's commitments or obligations under this Chapter.

Article 90

*Environmental Measures*

Each Country shall not encourage investments by investors of the other Country by relaxing its environmental measures.

Article 91

*Denial of Benefits*

1. A Country may deny the benefits of this Chapter to an investor of the other Country that is an enterprise of the other Country and to an investment of such investor if investors of a third State own or control the enterprise, and the denying Country:

- (a) does not maintain diplomatic relations with the third State; or
- (b) adopts or maintains measures with respect to the third State that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Country may deny the benefits of this Chapter to an investor of the other Country that is an enterprise of the other Country and to investments of such investor if investors of a third State own or control the enterprise and the enterprise has no substantial business activities in the Country under whose law it is constituted or organised.

Article 92

*Co-operation in Promotion and Facilitation of Investments*

1. Both Countries shall co-operate in promoting and facilitating investments between the Countries through ways such as:

- (a) discussing effective ways on investment promotion activities and capacity building;

- (b) facilitating the provision and exchange of investment information including information on their laws, regulations and policies to increase awareness on investment opportunities; and
  - (c) encouraging and supporting investment promotion activities of each Country or their business sectors.
2. The implementation of this Article shall be subject to the availability of funds and the applicable laws and regulations of each Country.

### Article 93

#### *Sub-Committee on Investment*

1. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:

- (a) exchanging information on any matters related to this Chapter;
  - (b) reviewing and monitoring the implementation and operation of this Chapter and the reservations set out in Annex 4;
  - (c) undertaking consultation to review the issues pertaining to the prohibition of performance requirements;
  - (d) discussing any issues related to this Chapter, including issues related to co-operation in the promotion and facilitation of investments;
  - (e) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
  - (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments; and
  - (b) co-chaired by officials of the Governments.

## **Chapter 8**

### **Trade in Services**

#### Article 94

##### *Scope and Coverage*

1. This Chapter shall apply to measures by a Country affecting trade in services.

2. This Chapter shall not apply to:
  - (a) in respect of air transport services, measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services; and
    - (iii) computer reservation system services;
  - (b) cabotage in maritime transport services;
  - (c) subsidies provided by a Country or a state enterprise thereof, including grants, government supported loans, guarantees and insurance; and
  - (d) measures affecting natural persons seeking access to the employment market of a Country, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. Articles 96, 97 and 101 shall not apply to any measure by a Country with respect to government procurement.
4. Article 101 shall not apply to any measure by a Country pursuant to immigration laws and regulations.
5. This Chapter shall not prevent a Country from applying measures to regulate the entry of natural persons of the other Country into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Country under the terms of a specific commitment.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.
6. Annex 5 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

#### Article 95

##### *Definitions*

For the purposes of this Chapter:

- (a) the term “aircraft repair and maintenance services” means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so called line maintenance;
- (b) the term “commercial presence” means any type of business or professional establishment, including through:

- (i) the constitution, acquisition or maintenance of a juridical person; or
- (ii) the creation or maintenance of a branch or a representative office,  
within a Country for the purposes of supplying a service;
- (c) the term “computer reservation system services” means services provided by computerized systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) the term “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (e) the term “juridical person of the other Country” means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of the other Country and is engaged in substantive business operations in the other Country; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (AA) natural persons of the other Country; or
    - (BB) juridical persons of the other Country identified under subparagraph (i) of this paragraph;
- (f) a juridical person is:
  - (i) “owned” by persons of a Country or a third State if more than 50 percent of the equity interest in it is owned by such persons;
  - (ii) “controlled” by persons of a Country or a third State if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
  - (iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (g) the term “measure” means any measure by a Country, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;  
  
Note: The term “measure” shall include taxation measures to the extent covered by the GATS.
- (h) the term “measures by a Country” means measures taken by:
  - (i) central or local governments and authorities; and

- (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities;
- (i) the term “measures by a Country affecting trade in services” includes measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Country to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of a Country for the supply of a service in the other Country;
- (j) the term “monopoly supplier of a service” means any person, public or private, which in the relevant market of a Country is authorised or established formally or in effect by that Country as the sole supplier of that service;
- (k) the term “natural person of the other Country” means a natural person who resides in the other Country or elsewhere and who under the law of the other Country:
  - (i) in respect of Japan, is a national of Japan; and
  - (ii) in respect of Malaysia, is a national of Malaysia or has the right of permanent residence in Malaysia;
- (l) the term “sector” of a service means:
  - (i) with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Country’s Schedule of Specific Commitments in Annex 6; or
  - (ii) otherwise, the whole of that service sector, including all of its sub-sectors;
- (m) the term “selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (n) the term “service consumer” means any person that receives or uses a service;
- (o) the term “service of the other Country” means a service which is supplied:
  - (i) from or in the other Country, or in the case of maritime transport, by a vessel registered under the laws of the other Country, or by a person of the other Country which supplies the service through the operation of a vessel or its use in whole or in part; or



- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Country;
- (p) the term “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (q) the term “service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (r) the term “service supplier” means any person that supplies a service;

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

- (s) the term “service supplier of the other Country” means any natural person of the other Country or juridical person of the other Country, that supplies a service;
- (t) the term “state enterprise” means an enterprise owned or controlled by a Country;
- (u) the term “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;
- (v) the term “trade in services” means the supply of a service:
  - (i) from within one Country into the other Country (“cross-border supply mode”);
  - (ii) in one Country to the service consumer of the other Country (“consumption abroad mode”);
  - (iii) by a service supplier of one Country, through commercial presence in the other Country (“commercial presence mode”); and
  - (iv) by a service supplier of one Country, through presence of natural persons of that Country in the other Country (“presence of natural persons mode”); and
- (w) the term “traffic rights” means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Country, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## Article 96

*Market Access*

1. With respect to market access through the modes of supply defined in paragraph (v) of Article 95, each Country shall accord services and service suppliers of the other Country treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 6.

Note: If a Country undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v)(i) of Article 95 and if the cross-border movement of capital is an essential part of the service itself, that Country is thereby committed to allow such movement of capital. If a Country undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v)(iii) of Article 95, it is thereby committed to allow related transfers of capital into that Country.

2. In sectors where market-access commitments are undertaken, the measures which a Country shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entirety, unless otherwise specified in its Schedule of Specific Commitments in Annex 6, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Country which limit inputs for the supply of services.

- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## Article 97

*National Treatment*

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, and subject to any conditions and qualifications set out therein, each Country shall accord to

services and service suppliers of the other Country, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

Note: Specific commitments assumed under this Article shall not be construed to require either Country to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Country may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of the other Country, 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 Country compared to like services or service suppliers of the other Country.

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

#### Article 98

##### *Additional Commitments*

The Countries may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 96 and 97, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Country's Schedule of Specific Commitments in Annex 6.

#### Article 99

##### *Schedule of Specific Commitments*

1. Each Country shall set out in a schedule the specific commitments it undertakes under Articles 96, 97 and 98. Schedules of Specific Commitments shall be annexed to this Agreement as Annex 6.

2. With respect to sectors where the specific commitments are undertaken, each Schedule of Specific Commitments in Annex 6 shall specify:

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

3. With respect to sectors or sub-sectors where the specific commitments are undertaken in Annex 6 and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) of this Article, other than those based on measures pursuant to immigration laws and regulations, shall be limited to those based on non-conforming measures, which are in effect on the date of entry into force of this Agreement.

4. Measures inconsistent with both Articles 96 and 97 shall be inscribed in the column relating to Article 96. This inscription will be considered to provide a condition or qualification to Article 97 as well.

#### Article 100

##### *Modification of Schedules*

1. Each Country may modify or withdraw any commitments in its Schedule of Specific Commitments in Annex 6.

2. The modifying Country shall notify its intention of such modification or withdrawal to the other Country and thereafter enter into negotiations in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in its Schedule of Specific Commitments in Annex 6 prior to such negotiations.

3. Such modification or withdrawal shall be approved by the Countries in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Countries.

#### Article 101

##### *Most-Favoured-Nation Treatment*

1. Each Country shall accord to services and service suppliers of the other Country treatment no less favourable than that it accords to like services and service suppliers of any third State.

2. The provision of paragraph 1 of this Article shall not apply to any measure by a Country with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 7.

3. If a Country has entered into an agreement on trade in services with a third State or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex 7, it shall, upon the request of the other Country, consider according to services and service suppliers of the other Country, treatment no less favourable than that it accords to like services and service suppliers of that third State pursuant to such an agreement.

#### Article 102

##### *Authorisation, Licensing or Qualification*

With a view to ensuring that any measure by a Country relating to the authorisation, licensing or qualification of service suppliers of the other Country does not constitute an unnecessary barrier to trade in services, each Country shall endeavour to ensure that such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to supply the service;
  - (b) is not more burdensome than necessary to ensure the quality of the service;
- and

- (c) does not constitute a disguised restriction on the supply of the service.

Article 103

*Mutual Recognition*

1. A Country may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Country for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers of the other Country.
2. Recognition referred to in paragraph 1 of this Article, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Countries or may be accorded unilaterally.
3. Where a Country recognises, by agreement or arrangement between the Country and a third State or unilaterally, the education or experience obtained, requirements met or licences or certifications granted in the third State:
  - (a) nothing in Article 101 shall be construed to require the Country to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the other Country; and
  - (b) the Country shall accord the other Country an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Country should also be recognised.

Article 104

*Transparency*

1. Each Country shall, upon the request by the other Country, provide in the English language, as appropriate, the other Country with information on its laws and regulations and any amendment thereof affecting Articles 96 and 97.
2. Each Country shall provide, as appropriate, the other Country with copies of its publicly released guidelines or policy statements affecting Articles 96 and 97 in relation to its specific commitments as set out in Annex 6.
3. Each Country shall provide, as appropriate, the other Country with copies of its annual reports or any other publication that are made generally available to the public.

Note: The information provided by the Countries under this Article will be supplied solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of the Countries under this Chapter.

Article 105

*Monopolies and Exclusive Service Suppliers*

1. Each Country shall ensure that any monopoly supplier of a service in the Country does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Country's commitments under this Chapter.

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

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

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

#### Article 106

##### *Emergency Safeguard Measures*

1. The Countries shall initiate discussions within one year from the entry into force of this Agreement to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures within five years of the entry into force of this Agreement.

- 2. (a) Notwithstanding the provision of paragraph 1 of this Article, if a Country deems itself to be affected by the negative impact caused by its specific commitments in Annex 6, the Country may request to hold a consultation with the other Country to deal with such situation and the other Country shall respond to the request in good faith.
- (b) In the consultation, the Countries shall endeavour to reach a mutually acceptable solution within a reasonable time.

#### Article 107

##### *Payments and Transfers*

1. Except under the circumstances envisaged in Article 108, a Country shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Chapter shall affect the rights and obligations of the Countries as members of the International Monetary Fund (hereinafter referred to in this Article as "the Fund") under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, as may be amended, provided that a Country shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 108, or at the request of the Fund.

#### Article 108

##### *Restrictions to Safeguard the Balance of Payments*

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Country may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.

2. The restrictions referred to in paragraph 1 of this Article:
  - (a) shall ensure that the other Country is treated as favourably as any third State;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Country;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
  - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.
  
3. In determining the incidence of such restrictions, a Country may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.
  
4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the other Country.

#### Article 109

##### *Denial of Benefits*

A Country may deny the benefits of this Chapter to a service supplier of the other Country where the Country establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a third State, and that denying Country:

- (a) does not maintain diplomatic relations with the third State; or
- (b) adopts or maintains measures with respect to the third State that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

#### Article 110

##### *Sub-Committee on Trade in Services*

1. For the purpose of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Services (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14, shall be:
  - (a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;
  - (b) reviewing the implementation and operation of this Chapter;
  - (c) reviewing and discussing the issues concerning the effective implementation of Articles 103 and 106;

- (d) reporting the outcome of discussions of the Sub- Committee to the Joint Committee; and
  - (e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall be:
- (a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the Governments.
3. The Sub-Committee shall hold its inaugural meeting within one year after this Agreement enters into force. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Countries may agree upon.
4. The Sub-Committee shall establish a working group on financial services (hereinafter referred to in this Article as “the Working Group”). The details and procedures of the Working Group shall be specified in Annex 5.

#### Article 111

##### *Review of Commitments*

1. The Countries shall review commitments on trade in services with the first review within five years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Countries under this Agreement.
2. In reviewing the commitments in accordance with paragraph 1 of this Article, the Countries shall take into account paragraph 1 of Article IV of the GATS.

### **Chapter 9**

#### **Intellectual Property**

#### Article 112

##### *General Provisions*

1. The Countries shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in administration of intellectual property protection system, and provide for measures for the enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Countries are parties.
2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property:
- (a) that are subject of Articles 119 through 124; and/or



- (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.
3. The Countries recognise the importance of international agreements which provide for the international standards of protection of intellectual property.
4. The Countries reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Countries are parties.

#### Article 113

##### *Definitions*

For the purposes of this Chapter:

- (a) the term “Nice Agreement” means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended and as may be amended; and
- (b) the term “Strasbourg Agreement” means the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended and as may be amended.

#### Article 114

##### *National Treatment*

Each Country shall accord to nationals of the other Country treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement. The obligation under this Article does not apply to the protection of new plant varieties in respect of the measure as set out in the reservation No. 1 of Schedule of Japan in Annex 4.

Note: For the purposes of Articles 114 and 115, “nationals” shall have the same meaning as in the TRIPS Agreement, and “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

#### Article 115

##### *Most-Favoured-Nation Treatment*

Each Country shall accord to nationals of the other Country treatment no less favourable than the treatment it accords to the nationals of a third State with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement. The obligation under this Article does not apply to the protection of new plant varieties in respect of the measure as set out in the reservation No. 1 of Schedule of Japan in Annex 4.

Article 116

*Streamlining and Harmonisation of Procedural Matters*

1. For the purposes of providing efficient administration of intellectual property protection system, each Country shall take appropriate measures to streamline its administrative procedures concerning intellectual property.
2. Applications for and grants of patents and publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement. Applications for registrations of, and registrations of, trademarks for goods and services and publications thereof shall be classified in accordance with the international classification system of goods and services established under the Nice Agreement.

Article 117

Transparency

For the purposes of further promoting transparency in administration of intellectual property protection system, each Country shall, in accordance with its laws and regulations, take appropriate measures to:

- (a) in cases other than those provided for in paragraph (b) of this Article and paragraph 5 of Article 119, publish information on at least grants of patents and registrations of utility models, industrial designs and trademarks, and make available to the public information contained in the dossiers thereof;
- (b) publish information on applications for registrations of, and registrations of, new plant varieties, and make available to the public information contained in the dossiers thereof;
- (c) make available to the public information on applications for the suspension by the competent authorities of the release of goods infringing intellectual property rights as a border measure; and
- (d) make available to the public information on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property protection system.

Article 118

*Promotion of Public Awareness Concerning Protection of Intellectual Property*

The Countries shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 119

*Patents*

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application in accordance with Article 27 of the TRIPS Agreement.

2. Each Country shall ensure that any patent application shall not be rejected solely on the ground that the subject matter claimed in the application is a micro-organism.
3. Each Country shall ensure that any applicant for a patent application may file a request to the competent authority that his application for a patent be examined, where appropriate, in preference to other applications, subject to reasonable grounds.
4. Each Country shall ensure that an application for a patent is examined upon the request of the applicant, where appropriate, in preference to other applications, if the applicant has filed an application for a patent of the same invention or substantially the same invention in the other Country. Each Country may require the applicant to furnish a result of relevant prior art search or examination result for the invention together with the request.
5. Each Country shall publish patent applications, in accordance with its laws and regulations, after the expiration of a period of 18 months from the filing date or, where priority is claimed, the priority date.

#### Article 120

##### *Industrial Designs*

1. Each Country shall provide for the protection of independently created industrial designs that are new or original in accordance with Article 25 of the TRIPS Agreement.
2. Each Country shall ensure that a claimed industrial design shall not be new, if it is made available to the public through telecommunication line before the filing date of the application for the registration of industrial design or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.
3. Each Country shall endeavour to provide that a claimed industrial design shall not be new, if it is publicly known or described in a publication made available to the public in the other Country before the filing date of the application for the registration of industrial design in the former Country or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.

#### Article 121

##### *Trademarks for Goods and Services*

1. Each Country shall ensure that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.
2. Each Country shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in either Country as indicating the goods or services of the owner of the well-known trademark, if use of that trademark is for unfair intentions, *inter alia*, intention to gain an unfair profit or intention to cause damage to the owner of the well-known trademark whether or not such use would result in a likelihood of confusion.

Article 122

*Copyright and Related Rights*

1. Each Country shall provide to authors, performers and producers of phonograms the exclusive right of authorising the making available to the public of their works, performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. Each Country shall provide for appropriate measures concerning limitations on liability for service providers:
  - (a) in case where a service provider provides a necessary deterrent to the transmission of information through telecommunication systems or networks controlled or operated by the service provider which it believes to be the infringement of copyright or related rights; and
  - (b) in case where the infringement of copyright or related rights occurs by the transmission of information through telecommunication systems or networks controlled or operated by a service provider and where the service provider is technically unable to deter the transmission or has difficulty in finding the infringement of copyright or related rights.
3. Each Country shall take necessary measures to promote the development of the collective management organisations for copyright and related rights in that Country.

Article 123

*New Plant Varieties*

1. The Countries recognise the importance of protecting new plant varieties in a manner consistent with internationally harmonised system. For this purpose, each Country shall ensure that rights relating to new plant varieties are adequately protected.
2. Each Country shall, having due regard to the concerns of the other Country, endeavour to protect as many plant genera or species as possible in a manner stated in paragraph 1 of this Article within the shortest period of time.

Article 124

*Unfair Competition*

1. Each Country shall provide for effective protection against unfair competition.
2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited:
  - (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

- (b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;
  - (c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the goods or the services, or the manufacturing process of the goods;
  - (d) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods which imitate the configuration of another person's goods except as provided for in the laws and regulations of each Country; and
  - (e) acts of acquiring or holding right to use domain names identical with or similar to a specific indication of goods or services of another person, or using the domain name, with intention to gain unfair profit or intention of causing damage to that other person.
3. Each Country shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.
4. Each Country shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Country shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request suspension or prevention of the act, destruction of the goods which constitute the act, removal of facilities used for the act, or any damages which result from the act.

#### Article 125

##### *Enforcement – Border Measures*

1. Each Country shall, in accordance with Article 51 of the TRIPS Agreement, provide for procedures concerning the suspension by the competent authorities of the release of goods infringing trademarks or copyrights or related rights. Each Country may also provide for corresponding procedures concerning the suspension by the competent authorities of the release of goods infringing other intellectual property rights, *inter alia*, patents, utility models, industrial designs or rights relating to new plant varieties.
2. Where a Country has determined to suspend the release of goods infringing intellectual property rights, the competent authorities of that Country shall inform the right holder of that intellectual property of the names and addresses of the consignor and the importer.
3. Each Country shall ensure that the competent authorities do not allow the re-exportation of the goods infringing trademarks or copyrights or related rights other than in exceptional circumstances.

#### Article 126

##### *Enforcement – Civil Remedies*

Each Country shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has

suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

#### Article 127

##### *Enforcement – Criminal Remedies*

Each Country shall provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Each Country shall, to the extent possible, endeavour to provide for criminal procedures and penalties to be applied in cases of wilful infringement of other intellectual property rights on a commercial scale.

#### Article 128

##### *Co-operation*

1. The Countries, recognising the growing importance of protection of intellectual property in pursuing further promotion of trade and investment between the Countries, subject to the availability of funds and the applicable laws and regulations of each Country, shall co-operate in the field of intellectual property. Costs of co-operation under this Article shall be borne in an equitable manner to be mutually agreed upon between the Countries.

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

3. The dispute settlement procedures provided for in Chapter 13 shall not apply to this Article.

#### Article 129

##### *Sub-Committee on Intellectual Property*

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system, such as:
  - (i) requirement of attestation or other certification;
  - (ii) general power of attorney system;
  - (iii) improvement of administration of modified substantive examination;
  - (iv) industrial design protection system including deferment of publication; and
  - (v) multi-class trademark application system;

- (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the Governments.

Article 130

*Security Exceptions*

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

**Chapter 10**

**Controlling Anti-competitive Activities**

Article 131

*Measures against Anti-competitive Activities*

1. Each Country shall, in accordance with its applicable laws and regulations, take measures which it considers appropriate against anti-competitive activities for the efficient functioning of its market.
2. Each Country shall, when necessary, endeavour to review and improve or adopt laws and regulations to effectively control anti-competitive activities.

Article 132

*Co-operation on Controlling Anti-competitive Activities*

1. The Countries shall, in accordance with their respective laws and regulations, co-operate in the field of controlling anti-competitive activities subject to their respective available resources.
2. The details and procedures of co-operation under this Article shall be specified in the Implementing Agreement.

Article 133

*Non-Application of Chapter 13*

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

**Chapter 11**

**Improvement of Business Environment**

Article 134

*Basic Principles*

1. Each Government shall, in accordance with the laws and regulations of its Country, take appropriate measures to further improve the business environment for the benefit of the enterprises of the other Country conducting their business activities in the Country.
2. The Governments shall, in accordance with the laws and regulations of their respective Countries, promote cooperation to further improve the business environment in their respective Countries and take necessary measures including establishing such mechanisms as provided for in Articles 135 and 137.

Article 135

*Sub-Committee on Improvement of Business Environment*

1. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Improvement of Business Environment (hereinafter referred to in this Chapter as “the Sub-Committee”) established in accordance with Article 14 shall be:
  - (a) addressing issues in relation to the improvement of business environment that the Sub-Committee considers appropriate, taking into account, as necessary, the findings reported by a Liaison Office on Improvement of Business Environment (hereinafter referred to in this Chapter as “Liaison Office”) established in accordance with Article 137, and in co-operation with other relevant Sub-Committee(s) with a view to avoiding unnecessary overlap with the works of other relevant Sub-Committee(s);
  - (b) reporting the findings and making recommendations to the Countries, including the measures to be taken by the Governments, regarding such functions as referred to in subparagraph (a). The Sub-Committee may consult with the Joint Committee prior to the submission of recommendations to the Countries;
  - (c) where appropriate, reviewing the implementation of the recommendations referred to in subparagraph (b);
  - (d) making available, where appropriate, to enterprises of the Countries the recommendations referred to in subparagraph (b) and the results of the review referred to in subparagraph (c) in an appropriate manner;



- (e) reporting the recommendations referred to in subparagraph (b) and other findings in relation to the implementation and operation of this Chapter to the Joint Committee; and
  - (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
3. The Sub-Committee shall be:
- (a) composed of representatives of the Governments, and may invite representatives of the business sector and other business-related organisations with the necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the Governments.
4. The other details of the Sub-Committee shall be set forth in the Implementing Agreement.

Article 136

*Recommendations from the Sub-Committee*

The Countries shall take into consideration the recommendations referred to in subparagraph 1 (b) of Article 135.

Article 137

*Liaison Office on Improvement of Business Environment*

1. Each Country shall designate and maintain a Liaison Office for the purposes of this Chapter.
2. The functions and other details of the Liaison Office shall be set forth in the Implementing Agreement.

Article 138

*Non-Application of Chapter 13*

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

## **Chapter 12**

### **Co-operation**

#### Article 139

##### *Basic Principles*

1. The Governments shall, in accordance with the applicable laws and regulations of their respective Countries, promote co-operation under this Agreement for their mutual benefits in order to liberalise and facilitate trade and investment between the Countries and to promote the well-being of the peoples of the Countries. For this purpose, the Governments shall co-operate and, where necessary and appropriate, encourage and facilitate cooperation between parties other than the Governments.
2. The main objectives of this Chapter are as follows:
  - (a) to enhance socio-economic development;
  - (b) to strengthen economic competitiveness;
  - (c) to advance human resource development;
  - (d) to promote sustainable development; and
  - (e) to improve overall well-being of the peoples of both Countries.

#### Article 140

##### *Fields of Co-operation*

The fields of co-operation under this Chapter shall include:

- (a) agriculture, forestry, fisheries and plantation;
- (b) education and human resource development;
- (c) information and communications technology;
- (d) science and technology;
- (e) small and medium enterprises;
- (f) tourism;
- (g) environment; and
- (h) other fields to be mutually agreed upon by the Governments.

Article 141

*Areas and Forms of Co-operation*

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

Article 142

*Costs of Co-operation*

1. The implementation of co-operation under this Chapter shall be subject to the availability of funds and the applicable laws and regulations of each Country.
2. Costs of co-operation under this Chapter shall be borne in an equitable manner to be mutually agreed upon between the Countries.

Article 143

*Sub-Committee on Co-operation*

1. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Co-operation (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 14 shall be:

- (a) exchanging information on the field of cooperation;
- (b) reviewing and monitoring the implementation and operation of this Chapter;
- (c) discussing any issues related to this Chapter;
- (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee regarding issues relating to the implementation of this Chapter, including the measures to be taken by the Countries;
- (e) identifying ways for further co-operation between the Countries;
- (f) supervising the functions and activities of the working group to be established pursuant to paragraph 5 of this Article;
- (g) establishing its own rules of administrative procedures; and
- (h) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.

2. The Sub-Committee shall respect existing consultation mechanisms between the Countries for Official Development Assistance and, as appropriate, share information and coordinate with such mechanisms to ensure effective and efficient implementation of co-operative activities and projects.

3. The Sub-Committee shall convene its inaugural meeting within one year after this Agreement enters into force and subsequently meet at such times as may be agreed by the Countries. The Sub-Committee shall meet at such venues as may be agreed by the Countries.

4. The Sub-Committee shall be:

- (a) composed of representatives of the Governments, and may, by consensus, invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the Governments.
5. The Sub-Committee may establish a working group for each field of co-operation under the Sub-Committee.

Article 144

*Non-Application of Chapter 13*

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

**Chapter 13**

**Dispute Settlement**

Article 145

*Scope*

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Countries concerning the interpretation or application of this Agreement.
2. Nothing in this Chapter shall prejudice any rights of the Countries to have recourse to dispute settlement procedures available under any other international agreement to which both Countries are parties.
3. Notwithstanding paragraph 2 of this Article, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Countries are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

Article 146

*Consultations*

1. Either Country may make a request in writing consultations to the other Country concerning any matter on the interpretation or application of this Agreement.
2. When a Country requests consultations pursuant to paragraph 1 of this Article, the other Country shall reply to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to reaching a prompt and mutually satisfactory resolution of the matter. In a case of consultations regarding perishable goods, the requested Country shall enter into consultations within 15 days after the date of receipt of the request.

3. The requesting Country shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint.
4. The Countries shall make every effort to reach a mutually satisfactory resolution through consultations.
5. Consultations shall be confidential and without prejudice to the rights of either Country in any further proceedings.

#### Article 147

##### *Good Offices, Conciliation or Mediation*

1. The Countries may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at the request of either Country at any time.
2. If the Countries agree, procedures for good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.
3. Proceedings involving good offices, conciliation or mediation and positions taken by the Countries during these proceedings, shall be confidential, and without prejudice to the rights of either Country in any further proceedings.

#### Article 148

##### *Establishment of Arbitral Tribunals*

1. The complaining Country that requested consultations under Article 146 may request in writing the establishment of an arbitral tribunal to the Country complained against:
  - (a) if the Country complained against does not enter into such consultations within 30 days after the date of receipt of the request for consultations under that Article; or
  - (b) if the Countries fail to resolve the dispute through such consultations under that Article within 60 days after the date of receipt of the request for such consultations,

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

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:
  - (a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
  - (b) the factual basis for the complaint.
3. Each Country shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the

arbitral tribunal. The third arbitrator shall not be a national of either Country, nor have his or her usual place of residence in either Country, nor be employed by either Country, nor have dealt with the dispute in any capacity.

4. The Countries shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3 of this Article. If the Countries fail to agree on the third arbitrator, the Countries shall request the two arbitrators appointed pursuant to paragraph 3 of this Article to appoint the third arbitrator. If the arbitrators are not able to reach agreement on the third arbitrator within 30 days after the date of receipt of the request, the Director-General of the WTO may be requested by either Country to appoint the third arbitrator.

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

6. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

#### Article 149

##### *Functions of Arbitral Tribunals*

1. The arbitral tribunal established pursuant to Article 148:
  - (a) should consult with the Countries as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;
  - (b) shall make its award in accordance with this Agreement and applicable rules of international law;
  - (c) shall set out, in its award, its findings of law and fact, together with the reasons therefore; and
  - (d) may, apart from giving its findings, include in its award suggested implementation options for the Countries to consider in conjunction with Article 152.
2. The arbitral tribunal may seek, from the Countries, such relevant information as it considers necessary and appropriate. The Countries shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.
3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Country, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a Country or on its own initiative, select, in consultation with the Countries, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

Article 150

*Proceedings of Arbitral Tribunals*

1. The arbitral tribunal shall meet in closed session.
2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Countries, failing which it shall alternate between the Countries.
3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.
4. Notwithstanding paragraph 3 of this Article, either Country may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Country to the arbitral tribunal which that other Country has designated as confidential. Where a Country has provided information or written submissions designated to be confidential, the other Country may request a nonconfidential summary of the information or written submissions which may be disclosed publicly. The Country to whom such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.
5. The Countries shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding. Any information or written submissions submitted by a Country to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Country.
6. The award of the arbitral tribunal shall be drafted without the presence of the Countries, and in the light of the information provided and the statements made.
7. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Countries its draft award, including both descriptive part and its findings and conclusions, for the purposes of enabling the Countries to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 days period, it may extend that period with the consent of the Countries. A Country may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.
8. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.
9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote.
10. The award of the arbitral tribunal shall be final and binding on the Countries.

Article 151

*Suspension and Termination of Proceedings*

1. Where the Countries agree, the arbitral tribunal may suspend its work at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 7 and 8 of Article 150 and paragraph 8 of Article 152 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be

resumed at any time upon the request of either Country. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Countries agree otherwise.

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

## Article 152

### *Implementation of Award*

1. The Country complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 150.

2. The Country complained against shall, within 20 days after the date of issuance of the award, notify the complaining Country of the period of time for implementing the award. If the complaining Country considers the period of time notified to be unacceptable, it may request to the Country complained against consultations with a view to reaching a mutually satisfactory implementation period. If no satisfactory implementation period has been agreed within 20 days after the date of receipt of the request, the complaining Country may refer the matter to an arbitral tribunal.

3. If the Country complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2 of this Article, the Country complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Country, with a view to developing mutually satisfactory resolution, through compensation or any alternative arrangement. If no satisfactory resolution has been agreed within 20 days after the date of expiry of that implementation period, the complaining Country may notify the Country complained against that it intends to suspend the application to the Country complained against of concessions or other obligations under this Agreement.

4. If the complaining Country considers that the Country complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2 of this Article, it may refer the matter to an arbitral tribunal.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 of this Article confirms that the Country complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2 of this Article, the complaining Country may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Country complained against that it intends to suspend the application to the Country complained against of concessions or other obligations under this Agreement.

6. Suspension of the application of concessions or other obligations under paragraphs 3 and 5 of this Article may only be implemented at least 30 days after the date of notification in accordance with those paragraphs. Such suspension shall:

- (a) not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;
- (b) be temporary, and be discontinued when the Countries reach a mutually satisfactory resolution or where compliance with the original award is effected;



- (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and
- (d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors.

7. If the Country complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Country set out in paragraph 3, 5 or 6 of this Article have not been met, it may request consultations with the complaining Country. The complaining Country shall enter into consultations within 10 days after the date of receipt of the request. If the Countries fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Country complained against may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3 and 4 of Article 148. Unless the Countries agree to a different period, such arbitral tribunal shall issue its award within 60 days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be binding on the Countries.

#### Article 153

##### *Expenses*

Unless the Countries agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Countries in equal shares.

### **Chapter 14**

#### **Final Provisions**

#### Article 154

##### *Table of Contents and Headings*

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

#### Article 155

##### *General Review*

The Countries shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force, and every five years thereafter, unless otherwise agreed by both Countries.

Article 156

*Annexes and Notes*

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

Article 157

*Amendment*

1. This Agreement may be amended by agreement between the Countries.
2. Such amendment shall be approved by the Countries in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Countries.
3. Notwithstanding paragraph 2 of this Article, amendments relating only to Annex 2 or 3 may be made by diplomatic notes exchanged between the Governments.
4. Amendments shall not affect the rights and obligations of the Countries provided for under this Agreement until the amendments enter into force.

Article 158

*Entry into Force*

This Agreement shall enter into force on the thirtieth day after the date on which the Governments exchange diplomatic notes informing each other that the legal procedures of their respective Countries necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 159.

Article 159

*Termination*

1. Either Country may terminate this Agreement by giving one year's advance notice in writing to the other Country.
2. The other Country may request in writing consultations concerning any matter that would arise from the termination within 45 days after the date of receipt of the notice referred to in paragraph 1 of this Article.
3. The requested Country shall enter into consultations in good faith with a view to reaching an equitable agreement within 30 days after the date of receipt of the request referred to in paragraph 2 of this Article.

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

DONE at Kuala Lumpur, on this thirteenth day of December in the year 2005 in duplicate in the English language.

For the Government of Japan:

For the Government of Malaysia: