COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT
BETWEEN THE REPUBLIC OF INDIA AND JAPAN

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Preamble

The Republic of India (hereinafter referred to as "India") and Japan,

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 Parties;

CONSCIOUS of their longstanding friendship and strong economic and political ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

BELIEVING that such bilateral relationship will be enhanced by forging mutually beneficial economic partnership through liberalisation and facilitation of trade and investment, and cooperation;

REAFFIRMING that the economic partnership will provide a useful framework for enhanced cooperation and serve the common interests of the Parties 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 the economic partnership will create larger and new market, enhance the attractiveness and vibrancy of their markets, and contribute to improving efficiency and competitiveness of their manufacturing and service industries;

FURTHER RECOGNISING that the economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that the economic partnership can play an important role in promoting sustainable development;

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;

REAFFIRMING their rights to pursue their economic and development goals and their rights to realise their national policy objectives;

CONVINCED that this Agreement would open a new era for the relationship between the Parties;

RESOLVED to promote trade and investment through the establishment of clear and mutually advantageous rules as well as regulatory cooperation;

SHARING the belief that the economic partnership would contribute to expanding trade and investment not only between the Parties but also in the region; and

DETERMINED to establish a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

Chapter 1
General Provisions

Article 1
Objectives

The objectives of this Agreement are to:

(a) liberalise and facilitate trade in goods and services between the Parties;

(b) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;

(c) ensure protection of intellectual property and promote cooperation in the field thereof;

(d) promote cooperation for the effective enforcement of competition laws in each Party;

(e) improve business environment in each Party;

(f) establish a framework to enhance closer cooperation in the fields agreed in this Agreement; and

(g) create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

Article 2
Geographical Scope of Application

Unless otherwise specified, this Agreement shall apply to "the Area" of each Party, which consists of the territory of the Party, including its territorial sea, airspace above such territory; and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which the Party has sovereign rights or jurisdiction in accordance with its laws and regulations and international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Note: Nothing in this Article shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Article 3
General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations. In the case of India, the Central Board of Excise and Customs in the Department of Revenue, Ministry of Finance, and in the case of Japan, the Ministry of Finance;

(b) the term "days" means calendar days, including weekends and holidays;

(c) the term "enterprise" means any legal person or any other entity duly formed, constituted or organised under applicable law, 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 or company;

(d) 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;

(e) the term "enterprise of a Party" means an enterprise formed, constituted or organised under the law of a Party and carrying out substantial business activities in the Area of the Party;

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

(g) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(h) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;

(i) the term "investments" means every kind of asset owned or controlled by an investor, including:

(i) an enterprise and a branch of 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) rights to claim money and claim any performance under contract having a financial value;

(vi) intellectual property;

Note: Intellectual property means that set out in paragraph 2 of Article 102.

(vii) goodwill;

(viii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and

(ix) any other movable or immovable property (including land), whether tangible or intangible, and any related property rights, such as leases, mortgages, liens and pledges;

Note 1: Investments also include amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note 2: 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 through the commitment of the capital, or the assumption of risk.

(j) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

(k) the term "investor of a Party" means a natural person or an enterprise of a Party, that seeks to make, is making, or has made, investments;

(l) 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, association or cooperative;

Note: A cooperative is a legal entity constituted under the relevant applicable laws in India.

(m) a juridical person is:

(i) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by such persons;

(ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; 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;

(n) the term "juridical person of the other Party" means a juridical person which is either:

(i) constituted or otherwise organised under the law of the other Party and engaged in substantive business operations in the Area of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of the other Party; or

(B) juridical persons of the other Party identified under subparagraph (i);

(o) the term "natural person of the other Party" means a natural person who under the law of the other Party:

(i) in respect of India, is a citizen of India; and

(ii) in respect of Japan, is a national of Japan;

(p) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;

(q) the term "Parties" means India and Japan and the term "Party" means either India or Japan;

(r) the term "person" means a natural person or an enterprise/juridical person;

(s) the term "service" includes any service in any sector except a service supplied in the exercise of governmental authority;

(t) the term "service supplier" means any person that supplies a service; and

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 Chapter 6. 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 Area of a Party where the service is supplied.

(u) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Article 4
Transparency

1. Each Party shall publish, or otherwise make publicly available, its laws, regulations, administrative procedures, and administrative rulings and judicial decisions of general application, with respect to any matter covered by this Agreement.

2. Each Party shall make 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.

3. Each Party shall, upon the request by the other Party, within a reasonable period of time, respond to specific questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

Article 5
Administrative Procedures

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

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 2; 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 of a Party shall, in accordance with the laws and regulations of the Party:

(a) endeavour to establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to the submitted applications; and

(b) make publicly available such periods of time, if established.

3. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, prior to taking any final decision which imposes obligations on or restricts rights of a person, provide that person with:

(a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure would 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 a position of such person,

provided that time, the nature of the measure, and the public interest permit.

Article 6
Review and Appeal

1. Each Party shall maintain judicial tribunals or procedures for the purpose of the prompt review and, where warranted, correction of actions taken by its Government relating to matters covered by this Agreement. Such tribunals or procedures shall be

impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party 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 Party 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 its Government.

Article 7
Measures against Corruption

Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption of its public officials regarding matters covered by this Agreement.

Article 8
Environmental Protection

1. Each Party, acknowledging the importance of environmental protection and sustainable development and recognising the right of each Party to establish its own domestic environmental policies and priorities, shall ensure that its laws and regulations provide for adequate levels of environmental protection and shall strive to continue to improve those laws and regulations.

2. Each Party shall take appropriate governmental action such as monitoring compliance with, and investigating suspected violations of, its environmental laws and regulations.

3. Each Party shall endeavour to:

(a) take necessary measures to enhance public awareness of environmental policy and related matters by way of, such as, promoting education in the field thereof; and

(b) encourage trade and dissemination of environmentally sound goods and services.

4. The Parties reaffirm their rights and obligations under any international agreements concerning the environment, to which both Parties are parties.

Article 9
Confidential Information

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

2. Information provided in confidence pursuant to this Agreement shall be used only for the purposes specified by the Party providing the information.

3. Notwithstanding paragraph 1, the confidential information provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party providing the information.

4. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 10
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 Party 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 4, 6 and 9 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 11
Exceptions

1. For the purposes of this Agreement except Chapters 6 and 9, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 6 and 8, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

3. Nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests to protect critical public infrastructure, including communications, power and water infrastructure, from deliberate attempts to disable or degrade such infrastructure.

Note: Nothing in this paragraph shall be construed so as to derogate from the rights and obligations of the Parties under the WTO Agreement.

4. Nothing in this Agreement shall be construed to require a Party to accord the benefits of this Agreement to the other Party, or to the goods or service suppliers of the other Party or investors that are enterprises of the other Party, where the Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party, or goods or service suppliers of a non-Party or investors that are enterprises of a non-Party, that would be violated or circumvented if the benefits of this Agreement were accorded to such goods or service suppliers or such enterprises of the other Party or to their investments.

5. For the purposes of Chapters 6 and 8, a Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the other Party and to its investments, or to a service supplier of the other Party that is a juridical person of the other Party in the situation where the enterprise or the juridical person is owned or controlled by an investor or persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefit of this Agreement were accorded to the service supplier or the enterprise or to its investments.

6. For the purposes of Chapter 6, subject to prior notification to and consultation with the other Party, a Party may also deny the benefits of the Chapter to a service supplier of the other Party, where the denying Party establishes that:

(a) the service supplier is a juridical person that is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party;

(b) the service is supplied from or in the Area of a non-Party;

(c) in the case of the supply of a maritime transport service, the service is supplied:

(i) by a vessel registered under the laws of a non-Party; and

(ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party; or

(d) the service supplier is not:

(i) in respect of a natural person, a natural person of the other Party as defined under this Agreement; or

(ii) in respect of a juridical person, a juridical person of the other Party as defined under this Agreement.

7. For the purposes of Chapter 8, subject to prior notification to and consultation with the other Party, a Party may also deny the benefits of the Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that:

(a) the enterprise has no substantial business activities in the Area of the other Party; and

(b) the enterprise is owned or controlled by an investor of a non-Party or of the denying Party.

Article 12
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

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

Article 13
Implementing Agreement

The Governments of the Parties shall, where necessary, 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 14
Joint Committee

1. A Joint Committee shall be established under this Agreement.

2. The functions of the Joint Committee shall be:

   (a) reviewing and monitoring the implementation and operation of this Agreement;

   (b) considering and recommending to the Parties any amendments to this Agreement;

   (c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

   (d) adopting:

      (i) the Implementing Procedures referred to in Section 11 of Annex 3; and

      (ii) any necessary decisions; and

   (e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

   (a) shall be composed of representatives of the Governments of the Parties; and

   (b) may establish, and delegate its responsibilities to, Sub-Committees.

4. The Joint Committee shall establish its rules and procedures.

5. The Joint Committee shall meet:

   (a) once a year at the request of either Party or at such times as may be agreed by the Parties; and

   (b) at such venues as may be agreed by the Parties.

Article 15
Communications

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

2. Unless otherwise provided for in this Agreement, any formal communication and notification between the Parties under this Agreement shall be made through the contact points referred to in paragraph 1.

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 2 of Article 23;

(b) the term "customs duty" means any customs duty, import duty or 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 II and paragraph 2 of Article III of the GATT 1994;

(ii) anti-dumping or countervailing duty applied pursuant to a Party'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 in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Anti-Dumping"), and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or

(iii) fees or other charges that shall be limited in amount to the approximate cost of services rendered;

Note 1: Customs duty for India refers to basic customs duty as specified in the First Schedule to the Customs Tariff Act, 1975 of India.

Note 2: Nothing in this subparagraph, including its notes, shall be construed so as to derogate from any rights and obligations of each Party under the GATT 1994.

(c) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(d) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in subparagraph 8(a) of Article 23;

(e) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and

(f) 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 Parties shall be in conformity with the Harmonized System.

Article 18
National Treatment

Each Party shall accord national treatment to the goods of the other Party 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 Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

2. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

Article 20
Customs Valuation

For the purpose of determining the customs value of imported goods from a Party into the other Party, 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 (hereinafter referred to as "the Agreement on Customs Valuation"), shall apply *mutatis mutandis*.

Article 21
Export Subsidies and Domestic Support

Neither Party shall introduce or maintain any export subsidies or domestic support, which are inconsistent with its obligations under the WTO Agreement, on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Agriculture").

Article 22
Import and Export Restrictions

1. Each Party shall not introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under the relevant provisions of the WTO Agreement.

2. In the event that a Party introduces a prohibition or restriction otherwise justified under the relevant provisions of the WTO Agreement with respect to the exportation of a good to the other Party, the former Party shall, upon the request of the other Party, provide to the other Party, as soon as possible after the prohibition or restriction is introduced, relevant information, which shall include a description of the good involved and the introduced prohibition or restriction, the actual date of introduction of such prohibition or restriction, unless the sharing of such information is considered by the former Party as prejudicial to public interest.

Article 23
Bilateral Safeguard Measures

1. Notwithstanding any provisions of this Chapter but subject to the provisions of this Article, each Party may apply a bilateral safeguard measure, to the extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 19, is being imported into the former Party 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 the domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

(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 on the day when the bilateral safeguard measure 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.

3. (a) A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Safeguards").

(b) The investigation referred to in subparagraph (a) shall in all cases be completed as early as possible and in no case later than one year from the date of initiation.

(c) In the investigation referred to in subparagraph (a) to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Article, the competent authorities of the Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

(d) The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

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

(a) A Party shall immediately deliver a written notice to the other Party upon:

(i) initiating an investigation referred to in subparagraph 3(a) 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 Party making the written notice referred to in subparagraph (a) shall provide the other Party 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 the originating good subject to the investigation and its subheading 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 of the Harmonized System, a precise description of the bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a), exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5.

(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 three years. However, in highly exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed five years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard

measure is over one year, the Party 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 that during which such measure had been previously applied, provided that the period of non-application is at least one year.

(f) Upon the termination of a bilateral safeguard measure, the rate of customs duty for an originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

5. (a) A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions whose value is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.

(b) If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to subparagraph 4(c), the Party against whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

(c) (i) The right to claim the trade compensation which is agreed on by the Parties under subparagraph (a) and the right of suspension provided for in subparagraph (b) shall not be exercised for the first two years 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 bilateral safeguard measure conforms to the provisions of this Article.

(ii) The two years period mentioned in subparagraph (i) may be extended by one year, provided that the Party applying the bilateral safeguard measure provides to the other Party, evidence that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury caused by an absolute increase in imports and that the industry concerned is adjusting.

6. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party 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 Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measures.

8. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties 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 a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 3 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).

(d) Subparagraph 4(f) and paragraph 7 shall be applied *mutatis mutandis* to a 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) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

9. A written notice referred to in subparagraphs 4(a) and 8(b) and any other communication between the Parties shall be done in the English language.

10. The Parties shall review the provisions of this Article, after 10 years of the date of entry into force of this Agreement, or earlier as may be agreed by the Parties.

Article 24
Anti-Dumping Investigation

When the authority of a Party competent for initiating investigation under Article 5 of the Agreement on Anti-Dumping received a written application by or on behalf of its domestic industry for the initiation of the investigation in respect of a good from the other Party, the former Party shall, at least 10 working days in advance of the initiation of such investigation, notify the other Party, and provide it with the full text, of such application. The other Party may inform the exporters, foreign producers and relevant trade associations known to the other Party of that notification and of the information included in that application. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6 of the Agreement on Anti-Dumping.

Article 25
Restrictions to Safeguard the Balance of Payments

1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII 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 Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

Chapter 3
Rules of Origin

Article 26
Definitions

For the purposes of this Chapter:

(a) the term "exporter" means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;

(b) the term "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels:

(i) which are registered in the Party;

(ii) which sail under the flag of the Party;

(iii) which are owned to an extent of at least 50 percent by nationals of the Parties, or by a juridical person with its head office in either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Parties, and of which at least 50 percent of the equity interest is owned by nationals or juridical persons of the Parties;

(iv) of which at least 50 percent of the total of the master and officers are nationals of the Parties; and

(v) of which at least 25 percent of the crew are nationals of the Parties;

(c) the term "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;

(d) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be

prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(e) the term "good" means any merchandise, product, article or material;

(f) the term "importer" means a natural or juridical person who imports a good into the importing Party;

(g) the term "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods 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 inspection;

(vii) catalysts and solvents; and

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

(h) the term "materials" means any matter or substance consumed in the production of a good, physically incorporated into a good, or used in the production of another good;

(i) the term "non-originating material" means any materials whose country of origin is other than the Parties (imported non-originating) and any material whose origin cannot be determined (undetermined origin) under this Chapter;

(j) the term "originating material" means any material that qualifies as originating under this Chapter; and

(k) the term "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 27
Originating Goods

Except as otherwise provided for in this Agreement, a good shall qualify as an originating good of a Party where:

(a) the good is wholly obtained or produced entirely in the Party, as provided for in Article 28; or

(b) the good is not wholly obtained or produced in the Party, provided that the good satisfies the requirements of Article 29.

Article 28
Wholly Obtained or Produced Goods

For the purposes of subparagraph (a) of Article 27, the following goods shall be considered as being wholly obtained or produced in a Party:

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

(b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;

(c) goods obtained from live animals in the Party;

(d) plants and plant products harvested, picked or gathered in the Party;

Note: For the purposes of this subparagraph, the term "plant" refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken in the Party;

(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial seas of the Parties;

(g) goods produced on board factory ships of the Party, outside the territorial seas of the Parties from the goods referred to in subparagraph (f);

(h) goods taken from the sea-bed or subsoil beneath the sea-bed outside the territorial sea of the Party, provided that the Party has rights to exploit such sea-bed or subsoil in accordance with the provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982;

(i) articles collected in the Party which can no longer perform their original purpose in the Party 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 Party and fit only for disposal or for the recovery of raw materials;

(k) parts or raw materials recovered in the Party 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 Party exclusively from the goods referred to in subparagraphs (a) through (k).

Article 29
Goods Produced Using Non-Originating Materials

1. For the purposes of subparagraph (b) of Article 27, a good shall qualify as an originating good of a Party if:

(a) the good has a qualifying value content, calculated using the formula set out in Article 30, of not less than 35 percent; and

(b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification at the six-digit level (i.e. a change in tariff subheading) of the Harmonized System.

Note: For the purposes of this subparagraph, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good of a Party if it satisfies the applicable product specific rules set out in Annex 2.

3. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rule requiring that the materials used have undergone a change in tariff classification or a specific manufacturing or processing operation, shall apply only to non-originating materials.

Article 30
Calculation of Qualifying Value Content

1. For the purposes of calculating the qualifying value content of a good, one or the other of the following formulas shall be applied:

(a)

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

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 2, 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;

(b)

$$Q.V.C. = \frac{V.O.M. + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit}}{F.O.B.} \times 100$$

Where:

V.O.M. is the value of originating material used in the production of the good.

Note: For the purpose of calculating the qualifying value content of a good, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

2. F.O.B. referred to in paragraph 1 shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the 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 a good.

3. For the purposes of paragraph 1, the value of a material used in a production of a good in a Party:

(a) shall be the CIF value; or

(b) shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party 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 Party.

Note: For the purposes of this paragraph, the term "CIF value" means the customs value of the imported good in accordance with the Agreement on Customs Valuation and includes freight and insurance where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located.

4. For the purposes of subparagraph 2(b) or 3(a), 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 domestic transaction of the good or non-originating material.

Article 31
Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party, provided that such good has undergone its last production process in the former Party which goes beyond the operations provided for in Article 33.

Article 32
De Minimis

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 or weight of the good. Such percentages shall be:

(a) in the case of a good classified under Chapters 15 through 24 (except 1604.20, 1605.20, 1605.90, 2101.11, 2101.20, 2106.10, 2106.90, 2207.10 and 2207.20), 2501.00, 2906.11, 2918.14, 2918.15, 2940.00, 3505.10, 3505.20, 3809.10 and 3824.60 of the Harmonized System, 7 percent in value of the good;

(b) in the case of a good classified under Chapters 28 through 49 (except 2905.44, 2906.11, 2918.14, 2918.15, 2940.00, 3502.11, 3502.19, 3505.10, 3505.20, 3809.10, 3824.60, 4601.29, 4601.94 and 4602.19) and 64 through 97 of the Harmonized System, 10 percent in value of the good; and

(c) in the case of a good classified under Chapters 50 through 63 (except 5001.00, 5003.00, heading 51.02, 51.03, 52.01 through 52.03, 53.01 and 53.02) of the Harmonized System, 7 percent in weight of the good.

Note 1: For the purposes of this Article, the term "value of the good" means the free-on-board value of the good referred to in paragraph 1 of Article 30 or the value set out in paragraph 2 of that Article.

Note 2: For the purposes of this Article, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

Note 3: This Article shall not be applied in calculating the qualifying value content set out in Article 30.

Article 33
Non-Qualifying Operations

A good shall not be considered to be an originating good of the exporting Party merely by reason of having undergone the following:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, removal of damaged parts) 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) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting;

(g) simple cutting, slicing and repacking or placing in bottles, flasks, bags or boxes, fixing on cards or boards, and all other simple packing operations;

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

(i) simple mixing of products whether or not of different kinds;

(j) simple assembly of parts of goods to constitute a complete product;

(k) slaughter of animals;

(l) mere dilution with water or another substance that does not materially alter the characteristics of the goods; or

(m) any combination of operations referred to in subparagraphs (a) through (l).

Note: For the purposes of this Article, an operation is described as "simple" if neither special skills nor machines, apparatus or equipment especially produced or installed for carrying it out are needed.

Article 34
Consignment Criteria

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

(a) transported directly from the other Party; or

(b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it

does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1, the good shall not be considered as an originating good of the other Party.

Article 35
Unassembled or Disassembled Goods

Where a good satisfies the requirements of the relevant provisions of Articles 27 through 33 and is imported into a Party from the other Party in an unassembled or 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 Party.

Article 36
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are mixed 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 Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are mixed in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were mixed 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 Party.

Article 37
Indirect Materials

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

Article 38
Accessories, Spare Parts, Tools and Instructional or Other Information Materials

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, accessories, spare parts, tools and instructional or other information materials delivered with the good that form part of the good's standard accessories, spare parts, tools and instructional or other information materials, shall be disregarded, provided that:

(a) the accessories, spare parts, tools and instructional or other information materials are not invoiced separately from the good, without regard to whether they are separately described in the invoice; and

(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for the good.

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

Article 39
Packing and Packaging Materials and Containers

1. Packing materials and containers for shipment that are used to protect a good during transportation shall not be taken into account in determining whether the good qualifies as an originating good of a Party.

2. With respect to packaging materials and containers that are used for retail sale of a good:

(a) such packaging materials and containers shall be disregarded in determining whether the good qualifies as an originating good of a Party, if they are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System; and

(b) if the good is subject to a qualifying value content requirement, the value of such packaging materials and containers shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 40
Operational Certification Procedures

The operational certification procedures set out in Annex 3 shall apply with respect to procedures regarding certificate of origin and related matters.

Article 41
Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 proposed by either Party; and

(iii) the Implementing Procedures referred to in Section 11 of Annex 3;

(b) considering any other matter, including development of an electronic system for facilitating the issuance and verification of certificate of origin as the Parties may agree related to this Chapter;

(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 pursuant to Article 14.

Chapter 4
Customs Procedures

Article 42
Scope and Objectives

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations of each Party and within the available resources of their respective customs authorities.

3. The objectives of this Chapter are to establish a framework to ensure transparency, consistency, fair and proper application of customs laws and prompt clearance of goods and to promote cooperation on customs matters, including the exchange of information, with a view to facilitating legitimate trade in goods between the Parties, preventing, investigating and repressing violation or attempted violation of customs laws, and meeting the needs of Governments of the Parties for the protection of society and revenue.

Article 43
Definition

For the purposes of this Chapter, the term "customs laws" means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically entrusted to the customs authority of each Party, and any regulations made by the customs authority of each Party under its statutory power.

Article 44
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person.

2. When information that has been made available must be revised due to changes in its customs laws, each Party shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. At the request of any interested person of the Parties, each Party shall provide, as quickly and accurately as possible, information relating to the specific customs matters

raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

Article 45
Customs Clearance

1. Both Parties shall apply their respective customs procedures in a predictable, consistent, transparent and fair manner.

2. For prompt customs clearance of goods traded between the Parties, each Party shall:

(a) make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

(d) promote cooperation, wherever appropriate, between its customs authority and:

(i) other national authorities of the Party; and

(ii) the trading communities of the Party.

3. Each Party shall provide affected parties with easily accessible processes of administrative and judicial review in relation to the action concerning the customs matters taken by the Party.

Article 46
Temporary Admission and Goods in Transit

1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the terms and conditions provided for in the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as "the A.T.A. Convention").

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

3. The Parties 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 Parties or non-Parties.

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 re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 47
Advance Rulings

Where a written application is made in accordance with relevant laws or procedures adopted or maintained by the importing Party and the importing Party has no reasonable grounds to deny the issuance, the importing Party shall endeavour to, prior to the importation of the good, issue a written advance ruling concerning the tariff classification, the customs valuation and the origin of the good, as well as the qualification of the good as an originating good of the exporting Party under the provisions of Chapter 3.

Article 48
Cooperation and Exchange of Information

1. The Parties shall cooperate and exchange information with each other on customs matters, including specific cases, such as:

(a) customs procedures;

(b) customs valuation within the meaning of the Agreement on Customs Valuation;

(c) enforcement against the trafficking of prohibited goods and the importation of goods suspected of infringing intellectual property rights;

(d) prevention, investigation and repression of violation or attempted violation of customs laws; and

(e) trade statistics data relating to customs clearance of goods and conveyances related to goods, exported from a Party to the other Party.

2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

3. Paragraph 4 of Article 9 shall not apply to the exchange of information under this Article.

Article 49
Sub-Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties;

(c) reporting its findings to the Joint Committee;

(d) for the purposes set out in paragraph 1, reviewing and making appropriate recommendations, as necessary, to the Joint Committee on the provisions of the Implementing Procedures referred to in Section 11 of Annex 3 concerning documents required by the customs authority under paragraph 4 of Section 2 of Annex 3; and

(e) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 14.

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

4. The composition of the Sub-Committee shall be specified in the Implementing Agreement.

Chapter 5
Technical Regulations, Standards and Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures

Article 50
Scope

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 (hereinafter referred to as "the TBT Agreement") and sanitary and phytosanitary (hereinafter referred to as "SPS") measures under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "the SPS Agreement"), that may, directly or indirectly, affect trade in goods between the Parties.

Article 51
Reaffirmation of Rights and Obligations

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

Article 52
Enquiry Points

Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures, and SPS measures and, if appropriate, to provide their relevant information.

Article 53
Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures, and SPS Measures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures, and SPS Measures (hereinafter referred to in this Chapter as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) exchanging information on technical regulations, standards and conformity assessment procedures, and SPS measures, and where necessary, coordinating the exchange of information on generic medicine provided for in Article 54;

(b) undertaking consultations on issues related to technical regulations, standards and conformity assessment procedures;

(c) undertaking science-based consultations to identify and address specific issues that may arise from the application of SPS measures;

(d) consulting cooperative efforts between the Parties in international fora in relation to technical regulations, standards and conformity assessment procedures, and SPS measures;

(e) holding discussions on the participation of each Party in the existing frameworks for mutual recognition in technical regulations, standards and conformity assessment procedures under international agreements;

(f) discussing Mutual Recognition Arrangements (hereinafter referred to in this Chapter as "MRAs") pursuant to Article 55 and other technical cooperation in relation to technical regulations, standards and conformity assessment procedures, and SPS measures;

(g) reviewing the implementation and operation of this Chapter;

(h) reporting, where appropriate, its findings to the Joint Committee; and

(i) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 14.

3. The Sub-Committee shall meet at such venues and times as may be agreed upon by the Parties, unless otherwise provided for in this Chapter.

4. The Sub-Committee shall be composed of representatives of the Governments of the Parties.

5. The Parties shall determine in advance the agenda for the individual meeting of the Sub-Committee, with a view to ensuring appropriate participation of relevant experts.

Article 54
Cooperation on Generic Medicine

1. The Parties shall exchange information on their respective regulatory measures concerning generic medicine, with a view to promoting cooperation between the Parties in the field of pharmaceuticals and building mutual confidence in the regulatory measures of each Party.

2. For the purposes of this Article, the term "generic medicine" means drugs approved by the competent authority of a Party under the laws and regulations of the Party as equivalent, in terms of active ingredients, dosages, usages and indications, to the drugs approved preceding the former drugs.

3. Applications by a person of a Party for registration and other approvals required for release of a generic medicine in the market of the other Party shall be considered by the relevant authorities of the other Party. Such applications shall be accorded, in the relevant procedure, treatment no less favourable than that accorded to like applications by its own person, where they fulfil all the requirements under the laws and regulations of the other Party. Such procedure shall be completed within a reasonable period of time from the date of such application.

Article 55
Mutual Recognition

1. The Parties shall, through the Sub-Committee, discuss the feasibility of MRAs in such sectors as electrical products, telecommunications terminal equipment and radio equipment and other sectors as may be mutually agreed by the Parties. In elaborating MRAs, the Parties shall confirm the economic benefits of such arrangements and, where necessary, the equivalence of the technical regulations of both Parties.

2. The Sub-Committee shall meet within three months from the date of entry into force of this Agreement, in order to discuss the feasibility of MRAs in sectors referred to in paragraph 1, and shall endeavour to arrive at a conclusion about such feasibility within six months. The Parties shall endeavour to reach a conclusion of MRAs under paragraph 1 within a reasonable period of time, normally not exceeding three years, from the date of such conclusion about the feasibility.

Article 56
Non-Application of Chapter 14

The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter, unless otherwise agreed by the Parties.

Chapter 6
Trade in Services

Article 57
Scope

1. This Chapter shall apply to measures by a Party 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; and

(c) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.

3. Articles 59 and 60 shall not apply to any measure by a Party with respect to government procurement.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of 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.

5. Annex 4 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

6. Annex 5 provides supplementary provisions to this Chapter on telecommunications services, including scope and definitions.

Article 58
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 the Area of a Party for the purposes of supplying a service;

(c) the term "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) the term "measure" means any measure, 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.

(e) the term "measure by a Party" means any measure taken by:

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

(ii) non-governmental bodies in the exercise of powers delegated by the central, regional or local governments or authorities of a Party;

(f) the term "measures by a Party affecting trade in services" includes measures by a Party in respect of:

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by the Party to be offered to the public generally; and

(iii) the presence, including commercial presence, of persons of the other Party for the supply of a service in the Area of the former Party;

(g) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(h) 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;

(i) the term "service consumer" means any person that receives or uses a service;

(j) the term "service of the other Party" means a service which is supplied:

(i) from or in the Area of the other Party, or in the case of maritime transport service, by a vessel registered under the law of the other Party, or by a person of the other Party which supplies such 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 Party;

(k) 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;

(l) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(m) the term "trade in services" means the supply of a service:

(i) from the Area of a Party into the Area of the other Party ("cross-border supply");

(ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad");

(iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence"); and

(iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons"); and

(n) 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 a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

Article 59
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (m) of Article 58, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 6.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (m)(i) of Article 58 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (m)(iii) of Article 58, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, 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 Party which limit inputs for the supply of services.

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

3. Each Party shall endeavour to reduce the requirements for a service supplier of the other Party to establish or maintain a representative office or any form of enterprise or to be resident in its Area, as a condition for the cross-border supply of a service.

Article 60
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 Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

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

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

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

4. A Party shall not invoke the preceding paragraphs under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation.

Article 61
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 59 and 60, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 6.

Article 62
Schedule of Specific Commitments

1. With respect to sectors or sub-sectors where specific commitments are undertaken by each Party, its 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.

2. Measures inconsistent with both Articles 59 and 60 shall be inscribed in the column relating to Article 59. This inscription will be considered to provide a condition or qualification to Article 60 as well.

Article 63
Most-Favoured-Nation Treatment

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

Article 64
Domestic Regulation

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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

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

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

5. The Parties shall jointly discuss disciplines on domestic regulation including measures relating to qualification requirements and procedures, technical standards and licensing requirements developed pursuant to paragraph 4 of Article VI of the GATS, with a view to incorporating such disciplines into this Chapter and thereby ensuring that such domestic regulation does not constitute unnecessary barriers to trade in services. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines developed under the GATS as referred to in paragraph 5, in the sectors inscribed in its Schedule of Specific Commitments in Annex 6 and subject to any terms, limitations, conditions or qualifications set out therein, each Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its specific commitments in a manner which:

(a) does not comply with the criteria outlined in subparagraph (a), (b) or (c) of paragraph 5; and

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

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

Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

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

Article 65
Recognition

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

2. The Parties shall enter into negotiations regarding the possibility of recognition of the education or experience obtained, requirements met, or licences or certifications granted on specific services sectors with a view to reaching a conclusion within three years after the entry into force of this Agreement.

3. Upon request being made in writing by a Party to the other Party, the Parties shall encourage that their respective professional bodies in any regulated service sector

negotiate and conclude, within 12 months, any arrangement for mutual recognition of education or experience obtained, requirements met, or licences or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to Chapter 14. Progress in this regard shall be periodically reviewed by the Parties in the Joint Committee established under Article 14.

4. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in any non-Party, the Party shall afford the other Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford the other Party adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

Article 66
Transparency

1. The competent authorities referred to in paragraph 2 of Article 4 shall, upon request by the other Party or service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the other Party or the service suppliers with respect to matters referred to in Article 4, including requirements and procedures for licensing and qualification, through enquiry points. The enquiry points shall be notified to the other Party by diplomatic note on the date of entry into force of this Agreement.

2. Each Party shall endeavour to prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, at the central governmental level, and governmental level of states and Union territories in the case of India and prefectural governmental level in the case of Japan, which are inconsistent with Articles 59 and/or 60, whether or not these measures are included in its Schedule of Specific Commitments in Annex 6. The list shall include the following elements and shall be reviewed annually and revised as necessary:

(a) sector and sub-sector or matter;

(b) type of inconsistency (i.e. Market Access and/or National Treatment);

(c) legal source or authority of the measure; and

(d) succinct description of the measure.

Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter. The Parties understand that the list as required in this paragraph shall be prepared if possible within five years after the entry into force of this Agreement.

3. The dispute settlement procedures provided for in Chapter 14 shall not apply to disputes arising out of paragraphs 1 and 2.

Article 67
Monopolies and Exclusive Service Suppliers

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

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

3. If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, the Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

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

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its Area.

Article 68
Payments and Transfers

1. Except under the circumstances envisaged in Article 69, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in

conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 69, or at the request of the International Monetary Fund.

Article 69
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions relating to such commitments. It is recognised that particular pressure on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1:

(a) shall be applied by a Party on a national treatment basis and such that the other Party is treated no less favourably than any non-Party;

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

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

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party 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, or any changes therein, shall be promptly notified to the other Party.

Article 70
Subsidies

1. Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS.

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

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

(a) domestic laws and regulations under which the subsidy is granted;

(b) form of the subsidy (e.g. grant, loan, tax concession);

(c) policy objective and/or purpose of the subsidy;

(d) dates and duration of the subsidy and any other time limits attached to it; and

(e) eligibility requirements of the subsidy including those with respect to potential beneficiaries.

4. The dispute settlement procedures provided for in Chapter 14 shall not apply to this Article.

Article 71
Review of Commitments

1. The Parties shall review commitments on trade in services with the first review within three years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Parties under this Agreement.

2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV of the GATS.

Article 72
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) exchanging information on domestic laws and regulations;

(c) discussing any issue related to this Chapter as may be agreed upon:

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 14.

Chapter 7
Movement of Natural Persons

Article 73
General Principles

1. This Chapter reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate entry and temporary stay of natural persons on a comparable basis and to establish transparent criteria and procedures for entry and temporary stay, and the need to ensure border security in each Party.

2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with paragraph 1, and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or investment activities under this Agreement.

Article 74
Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the other Party and fall under one of the categories referred to in Annex 7.

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the territorial integrity and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner so as to nullify or impair the benefits accruing to the other Party under the terms of specific commitments.

Note: The sole fact of requiring a visa for natural persons of the other Party and not for those of non-Parties shall not be regarded as nullifying or impairing benefits under specific commitments set out in Annex 7.

Article 75
Definition

For the purposes of this Chapter, the term "natural persons of a Party" means natural persons who under the law of the Party:

(a) in respect of India, are citizens of India; and

(b) in respect of Japan, are nationals of Japan.

Article 76
Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter including the terms and conditions for each category set out in Annex 7, provided that the natural persons comply with the immigration laws and regulations applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.

2. Neither Party shall impose or maintain any limitations on the total number of visas to be granted in the Parties to natural persons of the other Party under paragraph 1, unless otherwise specified in Annex 7.

Article 77
Regulatory Transparency

1. Each Party shall maintain or establish appropriate mechanisms to respond to inquiries from interested persons of the other Party regarding regulations affecting entry and temporary stay of natural persons of the other Party. Such inquiries may include those on special difficulties which natural persons of the other Party encounter in the process of seeking entry into and temporary stay in the former Party.

2. To the extent possible, each Party shall allow reasonable time between the date of the publication through electronic or other means of regulations affecting the entry and temporary stay of natural persons of the other Party and their effective date.

3. On the date of entry into force of this Agreement, each Party shall exchange information on procedures relating to the processing of applications for entry and temporary stay which exist at that date. Each Party shall also, without undue delay, provide the other Party updates of information on procedures relating to the processing of applications for entry and temporary stay.

4. Each Party shall notify natural persons of the other Party, regarding the application for entry and temporary stay, either directly or through their prospective

employers, of its final determination, including the period of temporary stay and conditions thereof.

5. Each Party shall endeavour, to the maximum extent possible, to take measures to simplify the requirements and to facilitate and expedite the procedures relating to the movement of natural persons of the other Party within the framework of its laws and regulations.

Article 78
General Principles for Grant of Entry
and Temporary Stay and Related Issues

1. Each Party shall process without delay applications for entry and temporary stay from natural persons of the other Party, including requests for further extensions of the temporary stay.

2. The Parties shall hold consultations on the feasibility of concluding a social security agreement. After such consultations, the Parties shall enter into negotiations in order to complete the consultations and negotiations within 36 months after the commencement of the consultations or the date of entry into force of this Agreement, whichever comes earlier.

Article 79
Accompanying Spouse and Dependent

Each Party shall ensure that spouse or dependent who accompanies a natural person of the other Party granted entry and temporary stay pursuant to paragraph 1 of Article 76 shall be allowed to work through change of the status of residence, provided that such spouse or dependent fulfils requirements under its laws and regulations. The Parties agree that spouse or dependent shall not be barred from working solely on the ground that he or she has accompanied a natural person of the other Party.

Note: For the purposes of this Article, the term "spouse" or "dependent" means spouse or dependent recognised as such in accordance with the laws and regulations of the other Party.

Article 80
Dispute Settlement

1. The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the natural persons of a Party affected by that matter have exhausted the available domestic administrative remedies of the other Party.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of the other Party within one year after the date of the institution of the administrative remedy, and the failure to issue such a determination is not attributable to the delay caused by the natural person.

Article 81
Reservations

The commitments made by each Party under this Chapter shall be subject to any terms, limitations, conditions and qualifications which the Party specified in its Schedule of Specific Commitments in Annex 6.

Article 82
Further Negotiations

The Parties shall, after the date of entry into force of this Agreement, enter into negotiations in accordance with Annex 7.

Chapter 8
Investment

Article 83
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to investors of the other Party and to their investments in the Area of the former Party.

Note: For greater certainty, this Chapter shall also apply to measures adopted or maintained by a Party relating to investments made by investors of the other Party in the Area of the former Party prior to the entry into force of this Agreement.

2. An investor of a Party whose investments are not made in compliance with the laws and regulations of the other Party which are consistent with this Agreement shall not be entitled to submit an investment dispute to conciliations or arbitrations referred to in paragraph 4 of Article 96.

3. In the event of any inconsistency between this Chapter and Chapter 6:

(a) with respect to matters covered by Articles 85, 86 and 89, Chapter 6 shall prevail to the extent of the inconsistency; and

(b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of the inconsistency.

4. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

Article 84
Definitions

For the purposes of this Chapter:

(a) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;

(b) the term "freely usable currencies" means freely usable currencies as defined under the Articles of Agreement of the International Monetary Fund;

(c) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:

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

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party;

(d) the term "natural person of a Party" means a natural person who under the law of the Party:

(i) in respect of India, is a citizen of India; and

(ii) in respect of Japan, is a national of Japan;

(e) the term "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958; and

(f) the term "transfers" means transfers and international payments.

Article 85
National Treatment

1. Each Party shall accord to investors of the other Party 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 investment activities in its Area.

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

Article 86
Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.

Article 87
General Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note: This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.

2. Each Party shall observe any obligation it may have entered into with regard to investment activities in its Area of investors of the other Party.

Article 88
Access to the Courts of Justice

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

Article 89
Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party:

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

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor;

(e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to restrict the exportation or sale for export;

(g) to appoint, as executives, managers or members of board of directors, individuals of any particular nationality;

(h) to transfer technology, a production process or other proprietary knowledge to natural or legal persons or any other entity in its Area, except when the requirement:

(i) is imposed or enforced by a court of justice, administrative tribunal or competition authority to remedy an alleged violation of competition laws and regulations; or

(ii) concerns the transfer of intellectual property which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "the TRIPS Agreement"); or

(i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides.

2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (h) and (i).

Article 90
Reservations and Exceptions

1. Articles 85, 86 and 89 shall not apply to:

(a) any existing non-conforming measure that is maintained by the following, as set out in Schedules in Annex 8:

(i) the central government of a Party; or

(ii) a state or an Union territory of India or a prefecture of Japan;

(b) any existing non-conforming measure that is maintained by a local government other than a state or an Union territory and a prefecture referred to in subparagraph (a)(ii);

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 85, 86 and 89.

2. Articles 85, 86 and 89 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors and activities set out in its Schedule in Annex 9.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 9, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. In cases where a Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex 8 or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 9 after the entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

(a) notify the other Party of detailed information on such amendment, modification or measure; and

(b) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the exceptions specified in its Schedules in Annexes 8 and 9 respectively.

6. Articles 85 and 86 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

7. Articles 85, 86 and 89 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

Note: For greater certainty, the term "existing" in this Article means being in effect on the date of entry into force of this Agreement.

Article 91
Special Formalities and Information Requirements

1. Nothing in Article 85 shall be construed to prevent a Party from prescribing special formalities in connection with investment activities of investors of the other Party and their investments in the Area of the former Party, provided that such special formalities do not materially impair the protections afforded by the former Party to investors of the other Party and their investments pursuant to this Chapter.

2. Notwithstanding Articles 85 and 86, a Party may require an investor of the other Party or its investments in the Area of the former Party, to provide business information concerning those investments, to be used solely for informational or statistical purposes. The former Party shall protect such business information that is confidential from disclosure that would prejudice the competitive position of the investor or the investments. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.

Article 92
Expropriation and Compensation

1. Neither Party shall take any measure of expropriation or nationalisation against investments in its Area of investors of the other Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

(a) for a 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 pursuant to paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall

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

3. The compensation shall be paid without delay and shall include interest at an appropriate commercial rate, taking into account the length of time from the time of expropriation to the time of payment. Such compensation shall be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely usable currencies.

4. Without prejudice to Article 96, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

5. This Article shall not apply with respect to the grant of compulsory licences concerning intellectual property in accordance with the TRIPS Agreement.

6. This Article shall be interpreted in accordance with Annex 10.

Article 93
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.

3. Notwithstanding the provisions of Article 11, neither Party shall be relieved of its obligation under paragraph 1 by reason of its measures taken pursuant to that Article.

Article 94
Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include, though not limited to, those of:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including payments made pursuant to loan agreements;

(e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;

(f) payments made in accordance with Articles 92 and 93; and

(g) payments arising out of the settlement of a dispute under Article 96.

2. Each Party shall further ensure that such transfers may be made in freely usable currencies at the market exchange rate prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers 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 or derivatives including futures and options;

(c) criminal or penal offenses;

(d) ensuring compliance with orders or judgments in judicial proceedings or administrative rulings; or

(e) obligations of investors arising from social security, and public retirement or compulsory savings scheme.

Note: With respect to India, obligations of investors referred to in this subparagraph include, *inter alia*, those arising from provident funds, and retirement gratuity/allowance and employees' state insurance programmes under the laws and regulations of India.

Article 95
Subrogation

1. If a Party 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 Area of the other Party, that other Party shall:

(a) recognise the assignment, to the former Party 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 Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. Articles 92, 93 and 94, shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

3. An investor shall not be entitled to seek any relief in an investment dispute under Article 96, to the extent of indemnification or other compensation received by that investor under paragraph 1.

Article 96
Settlement of Investment Disputes between a Party and an Investor of the Other Party

1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Chapter and other provisions of this Agreement as applicable with respect to the investor and its investments.

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 settlement by domestic administrative or judicial fora of the Party that is the other party to the investment dispute (hereinafter referred to in this Article as "disputing Party"). However, in the event that the disputing investor has submitted the investment dispute for resolution under one of the international conciliations or arbitrations referred to in paragraph 4, no proceedings may be initiated by the disputing investor for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies.

3. An investment dispute shall, as far as possible, be settled amicably through consultations or negotiations between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. If the investment dispute cannot be settled through such consultation or negotiation within six months from the date on which the disputing investor requested for the consultation or negotiation in writing, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States (hereinafter referred to as "the ICSID Convention"), so long as the ICSID Convention is in force between the Parties;

(b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties;

(c) conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law or arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; or

(d) any arbitration in accordance with other arbitration rules if agreed with the disputing Party.

5. The applicable conciliation or arbitration rules shall govern the conciliation or arbitration set forth in paragraph 4 except to the extent modified in this Article.

6. No investment dispute may be submitted to international conciliation or arbitration referred to in paragraph 4 if the disputing investor has initiated any proceedings for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies. However, in the event that those proceedings are withdrawn within 30 days from the date of filing the case, the disputing investor may submit the investment dispute to such international conciliations or arbitrations.

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

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to

present the problem clearly, including the obligations under this Agreement alleged to have been breached;

(c) conciliation or arbitration set forth in paragraph 4 which the disputing investor chooses to invoke; and

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

8. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor.

(b) The consent given under subparagraph (a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, for written consent of the parties to a dispute; and

(ii) Article II of the New York Convention for an agreement in writing.

9. Notwithstanding paragraph 8, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

10. Notwithstanding paragraph 6, the disputing investor may initiate or continue an action that seeks interim injunctive relief not involving the payment of damages or resolution in substance of the dispute before an administrative tribunal or agency or a court of justice under the law of the disputing Party.

11. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 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 Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes in the case of arbitration referred to in subparagraph 4 (a) or (b), or the Secretary-General of the Permanent Court of Arbitration, at The Hague in the case of arbitration referred to in subparagraph 4 (c) or (d), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed, subject to the requirements of paragraph 12.

12. Unless the disputing parties agree otherwise, the third arbitrator shall not be a citizen of India nor national of Japan, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Chapter and other provisions of this Agreement as applicable and applicable rules of international law.

15. The disputing Party shall deliver to the other Party:

(a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

16. On written notice to the disputing parties, the Party which is not the disputing Party may make submission to the arbitral tribunal on a question of interpretation of this Chapter and other provisions of this Agreement as applicable.

17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

18. The award rendered by the arbitral tribunal shall include:

(a) a decision whether or not there has been a breach by the disputing Party of any obligation under this Chapter and other provisions of this Agreement as applicable with respect to the disputing investor and its investments, together with the basis and the reasons for such decision; 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 Party may pay monetary damages and any

applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules.

Note: For the purposes of this paragraph, it is understood that where the disputing Party asserts as a defence that the measure alleged to constitute a breach referred to in paragraph 1 is within the scope of a security exception as set out in Article 11, the arbitral tribunal shall not review the merits of any such measure in its award. However, the arbitral tribunal shall not be prevented from assessing the remedy referred to in subparagraph (b) in the light of the treatment as set out in paragraph 1 of Article 93 for any loss or damage relating to the investments caused by the measure in question.

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

20. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party has 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.

21. An arbitral tribunal shall address and decide as a preliminary question any objection by the disputing Party that the investment dispute is not within the competence of the arbitral tribunal, provided that the disputing Party so requests immediately after the establishment of the arbitral tribunal.

Article 97
Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 85 relating to cross-border capital transactions and Article 94:

(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 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund;

(b) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(c) be temporary and eliminated as soon as conditions permit;

(d) be promptly notified to the other Party; and

(e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party.

3. The Party adopting any measures under paragraph 1 shall, on request by the other Party, commence consultations in order to examine the possibility of reviewing the measures adopted by the former Party.

4. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 98
Prudential Measures

Where a Party takes measures relating to financial services for prudential reasons, the provisions of paragraph 1 of Section 2 in Annex 4 shall apply accordingly.

Article 99
Environmental Measures

Each Party recognises that it is inappropriate to encourage investment activities in its Area of investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

Article 100
Relation to Other Obligations

Nothing in this Agreement shall be construed so as to derogate from laws and regulations of each Party or any other international agreements that entitle investors of

the other Party and to their investments treatment more favourable than that accorded by this Agreement.

Article 101
Duration and Termination

In respect of investments made prior to the date of termination of this Agreement, the provisions of this Chapter, as well as provisions of this Agreement which are directly related to this Chapter, shall continue to be effective for a period of ten years from the date of termination of this Agreement.

Chapter 9
Intellectual Property

Article 102
General Provisions

1. The Parties shall ensure adequate, effective, and non-discriminatory protection of intellectual property, in accordance with the provisions of the TRIPS Agreement.

2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property that are under the TRIPS Agreement.

Article 103
Streamlining of Procedural Matters

1. For the purposes of providing efficient administration of the intellectual property protection system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.

2. Neither Party shall require the certification, by any person other than the applicant or its representative, of a translation of an earlier application whose priority is claimed except in cases where the competent authority of the Party may reasonably doubt the accuracy of the translation.

3. Neither Party shall require that submission of a power of attorney be completed together with the filing of the application as a condition for according a filing date to the application.

Article 104
Promotion of Public Awareness Concerning Protection of Intellectual Property

The Parties shall endeavour to take such measures as deemed appropriate 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 105
Patents

1. Neither Party shall require the rejection of any application for patent solely on the ground that the subject matter claimed in the application includes, among other things, a computer programme.

Note: This paragraph shall not prejudice the patentability or non-patentability of computer programmes *per se* which shall be determined in accordance with the laws and regulations of each Party.

2. Where the competent authority of a Party intends to render its decision to the effect that an application for a patent is to be refused, it shall notify the applicant for the patent of the reasons for refusal and give the said applicant an opportunity to present, in accordance with the laws and regulations of the Party, its case against the reasons for refusal within a reasonable period of time.

3. Each Party shall provide that a patent owner may file a request in accordance with its laws and regulations for correction of the description, the scope of the claims, or the drawings, that are attached to the patent application to the competent authority for patents for the purpose of restriction of the scope of the claims.

Article 106
Trademarks

1. Each Party shall protect well-known trademarks in accordance with the following subparagraphs:

(a) Each Party may determine in accordance with its laws whether a trademark is a well-known trademark.

(b) Each Party shall, *ex officio* if its legislation so permits, or on the objection or request for invalidation raised in opposition or rectification or cancellation or invalidation proceedings by the proprietor of the well-known trademark, in accordance with its laws, refuse the application for or rectify or cancel or invalidate the registration of a trademark which is identical with or similar to a well-known trademark.

Note: For greater certainty, for the purposes of this subparagraph, each Party may in accordance with its laws take into account either of the following conditions and where appropriate other relevant factors:

(i) the use of the trademark in question is for unfair intentions; or

(ii) the use of that trademark would take unfair advantage of or be detrimental to the distinctive character or repute of the well-known trademark.

(c) For the purposes of subparagraphs (a) and (b), each Party shall in accordance with its laws determine that a trademark is a well-known trademark in either one or both of the following circumstances and where appropriate taking into account other relevant factors:

(i) if a trademark is well known in the other Party; or

(ii) if a trademark is well known in both Parties;

as indicating the goods or services of the proprietor of that trademark.

Note: The protection of a well-known trademark shall also extend, subject to the laws of each Party, to goods or services which are not similar to those goods or services which are covered by the well-known trademark.

2. Each Party shall ensure that an applicant may file a request to the competent authority that its application for registration of a trademark be examined in preference to other applications, subject to reasonable grounds and procedural requirements. Where such a request has been filed, the competent authority shall take the request into consideration and endeavour to examine the application in preference to other applications, where appropriate.

Article 107
Geographical Indications

Each Party shall ensure protection of geographical indications in accordance with its laws and regulations and in conformity with the TRIPS Agreement.

Article 108
Unfair Competition

Each Party shall provide for protection against acts of unfair competition in accordance with Article 10 *bis* of the Paris Convention for the Protection of Industrial Property (1967).

Article 109
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
Government Procurement

Article 110
Procurement Principle

Recognising the importance of government procurement in furthering the expansion of production and trade so as to promote growth and employment, each Party shall ensure transparency of the measures regarding government procurement in accordance with its national laws and regulations.

Article 111
Non-Discrimination

With respect to any measure regarding government procurement, each Party shall provide to the goods, services and suppliers of the other Party treatment no less favourable than that it accords to non-Party's goods, services and suppliers in accordance with its laws and regulations.

Article 112
Exchange of Information

1. The Parties shall at the national level, subject to their respective laws and regulations, exchange information, to the extent possible in the English language and in a timely manner, on their respective laws and regulations, policies and practices on government procurement, as well as on any reforms to their existing government procurement regimes.

2. Each Party shall endeavour to designate a contact point for the exchange of information and for providing information to the other Party.

Article 113
Further Negotiations

The Parties shall enter into negotiations to review this Chapter with a view to achieving a comprehensive Chapter on Government Procurement including the provisions of challenge procedures, when India expresses its intention to become a Party to the Agreement on Government Procurement in the Annex 4 to the WTO Agreement (hereinafter referred to as "the GPA").

Note: If the GPA is amended or is superseded by another agreement, "the GPA", for the purposes of this Chapter, shall refer to the GPA as amended or such other agreement.

Article 114
Negotiations on Non-Discrimination

In the event that, after the entry into force of this Agreement, a Party offers a non-Party any advantageous treatment concerning the measures regarding government procurement, including access to its government procurement market, the former Party shall, upon the request of the other Party, afford adequate opportunity to enter into negotiation with the other Party with a view to extending such advantageous treatment to the other Party on a reciprocal basis.

Article 115
Exceptions

1. The provisions of this Chapter shall not be applicable to:

   (a) with respect to India, state governments and their entities and local governments; and

   (b) with respect to Japan, local governments.

2. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

Chapter 11
Competition

Article 116
Anticompetitive Activities

Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its market.

Article 117
Definitions

For the purposes of this Chapter, the term "competition laws and regulations" means:

(a) for India, the Competition Act, 2002, No. 12 of 2003, as amended by the Competition (Amendment) Act, 2007, and its implementing regulations as well as any amendment thereto; and

(b) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) and its implementing regulations as well as any amendment thereto.

Article 118
Cooperation on Controlling Anticompetitive Activities

The Parties shall, in accordance with their respective laws and regulations, endeavour to cooperate in the field of controlling anticompetitive activities subject to their respective available resources.

Article 119
Non-Discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

Article 120
Procedural Fairness

Each Party shall implement administrative and judicial procedures in a fair manner to control anticompetitive activities, pursuant to its relevant laws and regulations.

Article 121
Transparency

Each Party shall promote transparency of the implementation of its competition laws and regulations and its competition policy.

Article 122
Non-Application of Chapter 14

The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter.

Chapter 12
Improvement of Business Environment

Article 123
Basic Principles

1. With a view to promoting trade and investment between the Parties, each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the enterprises of the other Party conducting their business activities in its Area.

2. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in their respective Areas.

Article 124
Sub-Committee on Improvement of Business Environment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Improvement of Business Environment (hereinafter referred to in this Chapter as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) supervising the activities of each Consultative Group established in accordance with Article 125;

(b) addressing and resolving issues that the Sub-Committee considers appropriate taking into account, as necessary, the findings reported by each Consultative Group and each Liaison Office designated in accordance with Article 126;

(c) reporting the findings and making recommendations to the Parties including the measures to be taken by the Parties, regarding such functions as referred to in subparagraphs (a) and (b) and relevant issues. Such recommendations shall be taken into consideration by the Parties;

(d) where appropriate, reviewing the measures taken by the Parties in relation to the recommendations referred to in subparagraph (c);

(e) making available to those concerned, in an appropriate manner, the recommendations referred to in subparagraph (c) and the results of the

review referred to in subparagraph (d), to the extent allowed by the respective laws and regulations of the Parties; and

(f) reporting the findings and recommendations referred to in subparagraph (c) and other findings in relation to the implementation and operation of this Chapter to the Joint Committee as fully and expeditiously as possible.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee may, by mutual consent of the Parties, invite representatives of local governments of the Parties and invite representatives of other relevant entities including those from the private sector with the necessary expertise relevant to the issues to be addressed.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee shall cooperate with other relevant Sub-Committees in an appropriate manner with a view to avoiding unnecessary duplication of works with those of other relevant Sub-Committees.

6. The other details of the Sub-Committee shall be set forth in the Implementing Agreement.

Article 125
Consultative Group

1. Each Party shall establish a Consultative Group as a subsidiary body of the Sub-Committee.

2. The composition, functions, and frequency of meetings of the Consultative Groups shall be set forth in the Implementing Agreement.

Article 126
Liaison Office

1. For the purposes of this Chapter, each Party shall designate and maintain a Liaison Office.

2. The functions and other details of the Liaison Offices shall be set forth in the Implementing Agreement.

Article 127
Non-Application of Chapter 14

The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter.

Chapter 13
Cooperation

Article 128
Basic Principle and Objectives

1. The Parties shall promote cooperation for their mutual benefits in order to liberalise and facilitate trade and investment between the Parties, to strengthen wide-ranging relations between the Parties and to promote the well-being of the peoples of the Parties. For this purpose, the Parties shall, where necessary and appropriate, encourage and facilitate cooperation between their relevant entities.

2. The main objectives of this Chapter include:

(a) liberalisation and facilitation of investment and trade between the Parties through cooperation in the mutually identified fields;

(b) strengthening economic competitiveness of the Parties;

(c) ensuring long-term sustainable development of the Parties;

(d) promoting the Parties' human resource development and capacity building; and

(e) improving overall well-being of the peoples of the Parties.

Article 129
Fields of Cooperation

The fields of cooperation under this Chapter shall include:

(a) environment;

(b) trade and investment promotion;

(c) infrastructure;

(d) information and communications technology;

(e) science and technology;

(f) energy;

(g) tourism;

(h) textiles;

(i) small and medium enterprises;

(j) health;

(k) entertainment and information;

(l) metallurgy; and

(m) other fields to be mutually agreed upon by the Parties.

Article 130
Scope and Forms of Cooperation

The scope and forms of cooperation under each identified field mutually agreed to by the Parties as referred to in Article 129 may be set forth in the Implementing Agreement.

Article 131
Implementation and Costs

1. The Parties shall, as soon as possible after the entry into force of this Agreement, initiate and promote discussions between their relevant implementing entities with a view to exploring potential cooperation activities in the respective fields referred to in Article 129. The Parties shall respect the established consultation mechanisms between them to ensure effective and efficient implementation of cooperation under this Chapter.

2. Cooperation under this Chapter may be implemented by the relevant entities through separate work plans, arrangements or any other means as deemed appropriate, to be drawn up on mutual consultation in due course. The Parties shall provide each other with the list of their relevant entities to be involved in the implementation of cooperation in the respective fields referred to in Article 129.

3. For the purposes of coordinating cooperation activities under this Chapter and promoting discussions referred to in paragraph 1, a Sub-Committee on Cooperation may be established pursuant to Article 14. The Sub-Committee may hold meetings at such frequency as mutually agreed upon by the Parties.

4. Cooperation in various fields need not be limited in scope and forms to those mentioned in Article 130.

5. The implementation of cooperation under this Chapter shall be subject to the availability of funds and the applicable laws and regulations of each Party.

6. Expenses incurred in the implementation of cooperation activities under this Chapter shall be borne in an equitable manner to be mutually agreed upon by the Parties.

Article 132
Non-Application of Chapter 14

The dispute settlement procedures provided for in Chapter 14 shall not apply to this Chapter.

Chapter 14
Dispute Settlement

Article 133
Scope

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.

2. Nothing in this Chapter shall prejudice any right of the Parties to have recourse to dispute settlement procedures available under the WTO Agreement.

3. Notwithstanding paragraph 2, once the establishment of an arbitral tribunal under this Chapter or a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement is requested with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of any other procedure for that particular dispute.

Article 134
Consultations

1. Either Party may request in writing to the other Party for consultations concerning any matter on the interpretation or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1, the other Party 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 mutually satisfactory solution of the matter. In cases of urgency, including those concerning perishable goods, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 135
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

Article 136
Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 134 may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party 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 Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

(a) the factual basis for the complaint; and

(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached.

3. Each Party 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 Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The Parties 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.

5. If a Party has not appointed an arbitrator pursuant to paragraph 3 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 4, the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot-drawing from the candidates proposed pursuant to paragraph 3.

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

7. An arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 137
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 136:

   (a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory solution;

   (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 therefor; and

   (d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 140.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request information or advisory reports in writing from experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings and provide information or advice upon request by the arbitral tribunal, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

4. Any information or advice obtained by the arbitral tribunal pursuant to paragraph 3 shall be made available to the Parties. Each Party may make written submissions on the handling of such information or advice by the arbitral tribunal.

Article 138
Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

3. Notwithstanding paragraph 2, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party 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 Party.

5. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

6. The arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency including those concerning perishable goods, after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 120 days or 60 days period, it may extend that period with the consent of the Parties. A Party 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.

7. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

8. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus. Failing such consensus, it may make its decisions, including its award, by majority vote. In case of majority vote, opinions expressed by individual arbitrators shall be anonymous.

9. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 139
Termination of Proceedings

1. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties.

2. When the Parties jointly notify the chair of the arbitral tribunal of the agreement under paragraph 1, the chair shall terminate the proceedings of the arbitral tribunal.

Article 140
Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 138.

2. If the prompt compliance with the award is impracticable, the Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time required for implementing the award. If the complaining Party considers that the period of time notified is unacceptable, it may refer the matter to an arbitral tribunal which then shall determine the reasonable implementation period.

3 If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation. If no satisfactory compensation has been agreed within 30 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

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

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

6. The suspension of the application of concessions or other obligations under paragraphs 3 and 5 may only be implemented at least 30 days after the date of the 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 the arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties 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 Party 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 Party set out in paragraph 3, 5 or 6 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party 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 through 5 of Article 136.

9. Unless the Parties agree to a different time period, the arbitral tribunal established under this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 141
Expenses

1. Unless otherwise agreed by the Parties, the expenses of the arbitral tribunal other than those referred to in paragraph 2, shall be borne by the Parties in equal shares.

2. Each Party shall bear the expenses of its representation in the proceedings of the arbitral tribunal.

Article 142
Language

All proceedings of the arbitral tribunal and all documents and information submitted to the arbitral tribunal shall be in the English language.

Chapter 15
Final Provisions

Article 143
Table of Contents and Headings

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

Article 144
Annexes and Notes

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

Article 145
Amendment

1. This Agreement may be amended by agreement between the Parties.

2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Parties.

3. Notwithstanding paragraph 2, amendments relating only to the following may be made by diplomatic notes exchanged between the Governments of the Parties:

   (a) Annex 1, provided that the amendments to the Schedule of a Party are made in accordance with the amendment of the Harmonized System, and include no change on the rates of customs duty to be applied to the originating goods of the other Party in accordance with Annex 1; or

   (b) Annex 2.

Article 146
Entry into Force

This Agreement shall enter into force on the first day of the second month following the month in which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into

force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 147.

Article 147
Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

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

DONE at Tokyo on this sixteenth day of February in the year 2011 in duplicate in the English language.

For the Republic of India:

ANAND SHARMA

For Japan:

SEIJI MAEHARA