ត មកពីរាជកិច្ច លេខ ៨៧

ព្រះរាជក្រម

នស/រកម/១០១០/០១៦

យើង

ព្រះករុណាព្រះបាទសម្តេចព្រះបរមនាថ នរោត្តម សីហមុនី
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- បានទ្រង់យល់ រដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា
- បានទ្រង់យល់ ព្រះរាជក្រឹត្យលេខ នស/រកត/០៩០៨/១០៥៥ ចុះថ្ងៃទី២៥ ខែកញ្ញា ឆ្នាំ២០០៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា
- បានទ្រង់យល់ ព្រះរាជក្រមលេខ ០២/នស/៩៤ ចុះថ្ងៃទី២០ ខែកក្កដា ឆ្នាំ១៩៩៤ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានទ្រង់យល់ ព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៦ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងពាណិជ្ជកម្ម
- បានទ្រង់យល់ សេចក្តីក្រាបបង្គំទូលថ្វាយ របស់សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន នាយករដ្ឋមន្ត្រី នៃព្រះរាជាណាចក្រកម្ពុជា និងរដ្ឋមន្ត្រីក្រសួងពាណិជ្ជកម្ម

ប្រកាសឱ្យប្រើ

ច្បាប់ ស្តីពីការអនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀងបង្កើតតំបន់ពាណិជ្ជកម្មសេរីអាស៊ាន-អូស្ត្រាលី-ណូវ៉ែលហ្សេឡង់ ដែលរដ្ឋសភាបានអនុម័ត កាលពីថ្ងៃទី០១ ខែតុលា ឆ្នាំ២០១០ នាសម័យប្រជុំរដ្ឋសភាលើកទី៥ នីតិកាលទី៤ និងដែលព្រឹទ្ធសភាបានយល់ស្របតាមទម្រង់ និងគតិនៃច្បាប់នេះទាំងស្រុង ដោយគ្មានការកែប្រែអ្វីឡើយ កាលពីថ្ងៃទី២១ ខែតុលា ឆ្នាំ២០១០ នាសម័យប្រជុំវិសាមញ្ញ ហើយដែលមានសេចក្តីទាំងស្រុងដូចតទៅនេះ :

ROYAUME DU CAMBODGE • ROYAL •

ច្បាប់
ស្តីពី
ការអនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀង
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មាត្រា ១.-

អនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀងបង្កើតតំបន់ពាណិជ្ជកម្មសេរីអាស៊ាន-អូស្ត្រាលី-ណូវែលហ្សេឡង់ ដែលបានចុះហត្ថលេខានៅទីក្រុងឆាអាំ ព្រះរាជាណាចក្រថៃឡង់ដ៍ នាថ្ងៃទី២៧ ខែកុម្ភៈ ឆ្នាំ២០០៩ ដូចមានអត្ថបទទាំងស្រុងភ្ជាប់មកជាមួយនេះ។

មាត្រា ២.-

រាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា ត្រូវបន្តរាល់នីតិវិធី ដើម្បីអនុវត្តកិច្ចព្រមព្រៀងនេះ។

មាត្រា ៣.-

ច្បាប់នេះ ត្រូវប្រកាសជាការប្រញាប់ ។

ធ្វើនៅព្រះបរមរាជវាំងរាជធានីភ្នំពេញ ថ្ងៃទី ២៥ ខែ តុលា ឆ្នាំ ២០១០

ព្រះហស្តលេខា និងព្រះរាជលញ្ឆកា

នរោត្តម សីហមុនី

ន.ស.ច.ប.៥៥២

បានយកសេចក្តីក្រាបបង្គំទូលថ្វាយ
សូមទ្បាយព្រះហស្តលេខាព្រះមហាក្សត្រ
នាយករដ្ឋមន្ត្រី

ហត្ថលេខា

សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

បានជម្រាបជូនសម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន
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រដ្ឋមន្ត្រីស្តីទី

ហត្ថលេខា

កឹម ស៊ីថន

លេខ:៧៧៣៩ ច.ស
ដើម្បីចម្លងចែក
រាជធានីភ្នំពេញ:ថ្ងៃទី០៣ ខែ វិច្ឆិកា ឆ្នាំ២០១០
អគ្គលេខាធិការនៃអង្គរដ្ឋាភិបាល

ឃុន ឌិនភេន

ANNEX ON EXPROPRIATION AND COMPENSATION

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 9.1 (Expropriation and Compensation) of Chapter 11 (Investment) addresses two situations:

(a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is where an action or series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in Paragraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and

(c) the character of the government action, including its objective and whether the action is disproportionate to the public purpose.[1]

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute expropriation of the type referred to in Paragraph 2(b).

[1] "Public purpose" shall be read with reference to Article 9.1(a) and Article 9.6 (Expropriation and Compensation) of Chapter 11 (Investment).

CHAPTER 12

ECONOMIC CO-OPERATION

Article 1
Scope and Objectives

1. The Parties reaffirm the importance of ongoing economic co-operation initiatives between ASEAN, Australia and New Zealand, and agree to complement their existing economic partnership in areas where the Parties have mutual interests, taking into account the different levels of development of the Parties.

2. The Parties acknowledge the provisions to encourage and facilitate economic co-operation included in various Chapters of this Agreement.

3. Economic co-operation under this Chapter shall support implementation of this Agreement through economic co-operation activities which are trade or investment related as specified in the Work Programme.

Article 2
Definitions

For the purposes of this Chapter:

(a) **implementing Party** or **implementing Parties** means, for each component of the Work Programme, the Party or Parties primarily responsible for the implementation of that component; and

(b) **Work Programme** means the programme of economic co-operation activities, organised into components, mutually determined by the Parties prior to the entry into force of this Agreement.

Article 3
Resources

1. Recognising the development gaps among the ASEAN Member States and among the Parties, the Parties shall contribute appropriately to the implementation of the Work Programme.

2. In determining the appropriate level of contribution to the Work Programme, the Parties shall take into account:

(a) the different levels of development and capacity of Parties;

(b) any in-kind contributions able to be made to Work Programme components by Parties; and

(c) that the appropriate level of contribution enhances the relevance and sustainability of co-operation, strengthens partnerships between Parties and builds Parties' shared commitment to the effective implementation and oversight of Work Programme components.

Article 4
Economic Co-operation Work Programme

1. Each Work Programme component shall:

(a) be trade or investment related and support this Agreement's implementation;

(b) be specified in the Work Programme;

(c) involve a minimum of two ASEAN Member States, Australia and/or New Zealand;

(d) address the mutual priorities of the participating Parties; and

(e) where possible, avoid duplicating existing economic co-operation activities.

2. The description of each Work Programme component shall specify the details necessary to provide clarity to the Parties regarding the scope and purpose of such component.

Article 5
Focal Points for Implementation

1. Each Party shall designate a focal point for all matters relating to the implementation of the Work Programme and shall keep all Parties updated on its focal point's details.

2. The focal points shall be responsible for overseeing and reporting on the implementation of the Work Programme in accordance with Article 6 (Implementation and Evaluation of Work Programme Components) and Article 7 (Review of Work Programme), and for responding to inquiries from any Party regarding the Work Programme.

Article 6
Implementation and Evaluation of Work Programme Components

1. Prior to the commencement of each Work Programme component, the implementing Party or Parties, in consultation with relevant participating Parties, shall develop an implementation plan for that Work Programme component and provide that plan to each Party.

2. The implementing Party or Parties for a Work Programme component may use existing mechanisms for the implementation of that component.

3. Until the completion of a Work Programme component, the implementing Party or Parties shall regularly monitor and evaluate the relevant component and provide periodic reports to each Party including a final component completion report.

Article 7
Review of Work Programme

At the direction of the FTA Joint Committee, the Work Programme shall be reviewed to assess its overall effectiveness and recommendations may be made. The FTA Joint Committee may make modifications to the Work Programme taking into account the review and available resources.

Article 8
Non-Application of Chapter 17 (Consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

CHAPTER 13

INTELLECTUAL PROPERTY

Article 1
Objectives

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

Article 2
Definitions

For the purposes of this Chapter:

(a) **intellectual property rights** means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and

(b) **WIPO** means the World Intellectual Property Organization.

Article 3
Affirmation of the TRIPS Agreement

Each Party affirms its rights and obligations with respect to each other Party under the TRIPS Agreement.

Article 4
National Treatment

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.

2. Each Party may avail itself of the exceptions referred to under Paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

[1] For the purposes of this Paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Paragraph, "protection" also includes the prohibition on circumvention of effective technological measures specified in Article 5 (Copyright).

Article 5
Copyright

1. Each Party shall:

   (a) provide to authors of works[2] the exclusive right to authorise any communication to the public of their works by wire or wireless means;

   (b) provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and

   (c) foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

2. Each Party shall endeavour to:

   (a) provide to authors of sound recordings [3] the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

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[2] For the purposes of this Chapter, "works" includes a cinematograph film.

[3] Where a Party is, or becomes, a member of the *WIPO Performances and Phonograms Treaty* (WPPT), that Party's obligations under this Paragraph shall be subject to any commitments and reservations that Party has made under the WPPT.

(b) provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures[4] that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law; and

(c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law, but which has a substantial prejudicial impact on the owner of the copyright.

Article 6
Government Use of Software

Each Party confirms its commitment to:

(a) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this Chapter; and

(b) encourage its respective regional and local governments to maintain or adopt similar measures.

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[4] For the purposes of this Chapter, "effective technological measures" means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

2. At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

(a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;

(b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and

(c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

Article 7
Trademarks and Geographical Indications

1. Each Party shall maintain a trademark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, as amended from time to time.

2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

3. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.

4. Each Party recognises that geographical indications may be protected through a trademark system.

Article 8
Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Article 9
Co-operation

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this Chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide co-operation to that Party to assist in the implementation of this Chapter.

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co-operate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

(a) the *Patent Cooperation Treaty 1970*;

(b) the *Strasbourg Agreement Concerning the International Patent Classification 1971*;

(c) the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977*;

(d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989*;

(e) the *Patent Law Treaty 2000*;

(f) the *International Convention for the Protection of New Varieties of Plants 1991*;

(g) the TRIPS Agreement;

(h) the *Singapore Treaty on the Law of Trademarks 2006*;

(i) the *WIPO Copyright Treaty 1996*; and

(j) the *WIPO Performances and Phonograms Treaty 1996*.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system [5] of trademark registration.

9. All co-operation under this Article is subject to the availability of resources.

Article 10
Transparency

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

[5] An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

Article 11
Recognition of Transitional Periods under the TRIPS Agreement

Nothing in this Chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

Article 12
Committee on Intellectual Property

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (IP Committee), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.

2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The IP Committee shall determine its terms of reference in accordance with this Chapter.

4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.

5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.

CHAPTER 14

COMPETITION

Article 1
Basic Principles

1. The Parties recognise the importance of co-operation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices.

2. The Parties recognise the significant differences in capacity between ASEAN Member States, Australia and New Zealand in the area of competition policy.

3. The Parties respect the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and policies.

4. Nothing in this Chapter requires a Party to develop specific competition related measures to address anti-competitive practices, or prevents a Party from adopting policies in other fields, for example to promote economic development.

Article 2
Co-operation

1. The Parties may engage in co-operation activities consistent with Article 1 (Basic Principles) in the field of competition, including:

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

(b) exchange of publicly available information about competition law and policy;

(c) exchange of officials for training purposes;

(d) exchange of consultants and experts on competition law and policy;

(e) participation of officials as lecturers, consultants, or participants at training courses on competition law and policy;

(f) participation of officials in advocacy programmes;

(g) other related activities following the introduction of a competition law in a Party; and

(h) any other form of technical co-operation as agreed upon by the Parties.

2. Mindful of this, where implementation of this Chapter is inhibited by capacity constraints, Australia and New Zealand may provide co-operation as they deem appropriate to assist ASEAN Member States with such implementation. Co-operation is subject to competition policy-related needs being identified and the availability of resources, having regards to respective Parties' laws and regulations.

Article 3
Contact Points

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, the Parties shall designate contact points for technical co-operation and information exchange under this Chapter.

Article 4
Non-Application of Chapter 17 (Consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

CHAPTER 15

GENERAL PROVISIONS AND EXCEPTIONS

Article 1
General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods) Chapter 3 (Rules of Origin) Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[1]

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would

[1] "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[2]

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

Article 2
Security Exceptions

1. Nothing in this Agreement shall be construed:

   (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

   (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

      (i) relating to fissionable materials or the materials from which they are derived;

[2] "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken so as to protect critical public infrastructures[3] including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;

(iv) taken in time of national emergency or war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

2. The FTA Joint Committee shall be informed to the fullest extent possible of measures taken under Paragraph 1(b) and (c) and of their termination.

Article 3
Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

[3] For clarity, this includes critical public infrastructures whether publicly or privately owned.

(b) they are granted or imposed under Article 8 (Transfers) of Chapter 11 (Investment); or

(c) they are granted or imposed under Article 9 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) apply, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 18.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 25.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply *mutatis mutandis*.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 16 (Institutional Provisions).

6. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

Article 4
Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with 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, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments;

(c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 2(a) (Definitions) of Chapter 11 (Investment)

2. Restrictions adopted or maintained under Paragraph 1(b) or (c) shall:

(a) be consistent with the IMF Articles of Agreement;

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

(c) not exceed those necessary to deal with the circumstances described in Paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and

(e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or non-Party.

3. With respect to trade in services and investment,

(a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition 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 or economic transition;

(b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

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

5. A Party adopting or maintaining any restrictions under Paragraph 1 shall:

(a) in the case of investment, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;

(b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

Article 5
Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfillment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 17 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 17 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

CHAPTER 16

INSTITUTIONAL PROVISIONS

Article 1
FTA Joint Committee

1. The Parties hereby establish a free trade agreement joint committee (the FTA Joint Committee) consisting of representatives of the Parties.

2. The functions of the FTA Joint Committee shall be to:

   (a) review the implementation and operation of this Agreement;

   (b) consider and recommend to the Parties any amendments to this Agreement;

   (c) supervise and co-ordinate the work of all subsidiary bodies established pursuant to this Agreement;

   (d) adopt, where appropriate, decisions and recommendations of subsidiary bodies established pursuant to this Agreement;

   (e) consider any other matter that may affect the operation of this Agreement or that is entrusted to the FTA Joint Committee by the Parties; and

   (f) carry out any other functions as the Parties may agree.

3. In the fulfillment of its functions, the FTA Joint Committee may establish additional subsidiary bodies, including *ad hoc* bodies, and assign them with tasks on specific matters, or delegate its responsibilities to any

5. Unless the Parties agree otherwise, the FTA Joint Committee shall convene its first meeting within one year after this Agreement enters into force. Its subsequent meetings shall be convened at such frequency as the Parties may mutually determine, and as necessary to discharge its functions under this Agreement. The FTA Joint Committee shall convene alternately in ASEAN Member States, Australia and New Zealand, unless the Parties agree otherwise. Special meetings of the FTA Joint Committee may be convened, as agreed by the Parties, within 30 days upon the request of a Party.

6. The FTA Joint Committee shall regularly report to the consultations of the ASEAN Economic Ministers, the Trade Minister of Australia and the Trade Minister of New Zealand through the meetings of their Senior Economic Officials.

Article 2
Communications

Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

subsidiary body established pursuant to this Agreement including:

(a) Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods):

(i) ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures);

(b) Services Committee established pursuant to Article 24 (Committee on Trade in Services) of Chapter 8 (Trade in Services);

(c) Investment Committee established pursuant to Article 17 (Committee on Investment) of Chapter 11 (Investment); and

(d) IP Committee established pursuant to Article 12 (Committee on Intellectual Property) of Chapter 13 (Intellectual Property).

4. The FTA Joint Committee shall establish its rules and procedures at its first meeting.

CHAPTER 17

CONSULTATIONS AND DISPUTE SETTLEMENT

SECTION A

Introductory Provisions

Article 1
Objectives

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

Article 2
Definitions

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

(a) **Complaining Party** means any Party or Parties that request consultations under Article 6 (Consultations);

(b) **dispute arising under this Agreement** means a complaint made by a Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations[1] under this Agreement[2];

[1] A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.
[2] Non-violation complaints are not permitted under this Agreement.

(c) **Parties to the dispute** means the Complaining Party and the Responding Party;

(d) **Responding Party** means any Party to which the request for consultations is made under Article 6 (Consultations); and

(e) **Third Party** means any Party who has notified its substantial trade interest or substantial interest in the matter pursuant to Article 6.7 (Consultations) or Article 10.1 (Third Parties) respectively.

Article 3
Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 10 (Electronic Commerce), Chapter 12 (Economic Co-operation) and Chapter 14 (Competition).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

Article 4
General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties to the dispute are encouraged at every sage of a dispute to make every effort to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be notified to the other Parties.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties to the dispute provided that any modification shall not prejudice the rights of the Third Parties pursuant to Article 10 (Third Parties).

Article 5
Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

3. This Article does not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

SECTION B

Consultation Provisions

Article 6
Consultations

1. Any Party may request consultations with any other Party with respect to any dispute arising under this Agreement. A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) ten days after the date of receipt of the request in cases of urgency, including perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. If the Responding Party does not enter into consultations within the periods specified in Paragraph 4, or a period otherwise mutually agreed, the Complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals).

6. The Parties to the dispute shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties to the dispute shall:

(a) provide sufficient information to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

7. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute within seven days after the notification of the request for consultations, of its desire to be joined in the consultations. Such notification shall be simultaneously provided to all Parties. Such Party shall be joined in the consultations if the Parties to the dispute agree.

Article 7
Good Offices, Conciliation, Mediation

1. The Parties to the dispute may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or re-convened under this Chapter.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Parties to the dispute in any further or other proceedings.

SECTION C

Adjudication Provisions

Article 8
Request for Establishment of Arbitral Tribunals

1. The Complaining Party may request the establishment of an arbitral tribunal to consider the matter if:

(a) the Responding Party does not enter into consultations in accordance with Article 6.4 (Consultations); or

(b) if the consultations fail to resolve a dispute within:

(i) 20 days after the date of receipt of the request for consultations in cases of urgency including perishable goods;

(ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

(iii) such other period as the Parties to the dispute may agree.

2. A request made pursuant to Paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. Where a request is made pursuant to Paragraph 1, an arbitral tribunal shall be established in accordance with Article 11 (Establishment and Re-convening of Arbitral Tribunals).

Article 9
Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may be established to examine these complaints if all of the Parties to the disputes agree. The Parties to the disputes should seek to establish a single arbitral tribunal whenever feasible.

2. The single arbitral tribunal shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would have

enjoyed had separate arbitral tribunals examined the compiaints are in no way impaired.

3. If more than one arbitral tribunal is established to examine the complaints related to the same matter, the Parties to the disputes shall endeavour to ensure that the same persons serve as arbitrators for each arbitral tribunal. The arbitral tribunals shall consult to ensure, to the greatest extent possible, that the timetables for the arbitral tribunal processes are harmonised.

Article 10
Third Parties

1. Any Party having a substantial interest in a matter before an arbitral tribunal may notify the Parties to the dispute of this interest no later than ten days after the date of receipt by the Responding Party of the request for the establishment of the arbitral tribunal or the date of a request for a Compliance Review Tribunal pursuant to Article 16 (Compliance Review). Such notification shall be simultaneously provided to all Parties. Any Party notifying its substantial interest shall have the rights and obligations of a Third Party.

2. A Third Party shall receive the submissions of the Parties to the dispute to the first substantive meeting of the arbitral tribunal with the Parties to the dispute.

3. A Third Party shall have an opportunity to make at least one written submission to the arbitral tribunal and shall have an opportunity to be heard by the arbitral tribunal at its first substantive meeting with the Parties to the dispute. Any submissions or other documents submitted by Third Parties shall be simultaneously provided to the Parties to the dispute and other Third Parties.

4. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding

4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in Paragraph 3, any Party to the dispute may at any time thereafter notify the other Parties to the dispute that it wishes to use the procedures set forth in Paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in' accordance with Paragraphs 5 to 7.

5. The Complaining Party or Parties shall appoint one arbitrator within ten days of the date of the receipt of the notification referred to in Paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in Paragraph 4.

6. Following the appointment of the arbitrators in accordance with Paragraph 5, the Parties to the dispute shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each of the Parties to the dispute may provide to the other Parties to the dispute a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties to the dispute have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in Paragraph 4, any Party to the dispute may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under Paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.

participation in arbitral tribunal proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose conditions. Unless otherwise agreed by the Parties to the dispute, the arbitral tribunal shall not grant any additional or supplemental rights to any Third Parties regarding participation in arbitral tribunal proceedings.

5. If a Third Party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs berefits accruing to it under this Agreement, such Party may have recourse to dispute settlement procedures under this Chapter.

Article 11
Establishment and Re-convening of Arbitral Tribunals

1. An arbitral tribunal requested pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in Paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 8 (Request for Establishment of Arbitral Tribunals), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties to the dispute may agree to use any of the optional procedures specified in this Chapter's Annex on Optional Procedures for Composing Arbitral Tribunals. Any procedures for composing the arbitral tribunal which are agreed under this Paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of Paragraphs 12 and 13.

8. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, any Party to the dispute;

(d) not have dealt with the matter in any capacity; and

(e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties to the dispute otherwise agree, arbitrators shall not be nationals of a Party to the dispute. In addition, the chair of arbitral tribunal shall not have his or her usual place of residence in the territory of a Party to the dispute.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

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

powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

13. Where an arbitral tribunal is re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) the re-convened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

Article 12
Functions of Arbitral Tribunals

1. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the provisions of this Agreement cited by the Parties to the dispute; and

(c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days from the date of the establishment of an arbitral tribunal:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 8 (Request for Establishment of

Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement."

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;

(c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and

(d) its reasons for its findings in Subparagraphs (b) and (c).

4. In addition to Paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties to the dispute. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties to the dispute otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings. Third Parties' submissions shall be reflected in the report of the arbitral tribunal.

7. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

8. The arbitral tribunal shall consult regularly the Parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

9. An arbitral tribunal re-convened under this Chapter shall also carry out functions with regard to compliance review under Article 16 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 17 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal re-convened under Article 16 (Compliance Review) and Article 17 (Compensation and Suspension of Concessions or other Obligations).

10. An arbitral tribunal shall make its findings by consensus provided that where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

Article 13
Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in this Chapter's Annex on Rules of Procedure for Arbitral Tribunal Proceedings (Rules of Procedure Annex) unless the Parties to the dispute agree otherwise. On the request of a Party to the dispute, or on its own initiative, the arbitral tribunal may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties to the dispute, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

4. Similarly, a Compliance Review Tribunal re-convened pursuant to Article 16 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after re-convening, fix the timetable for the compliance review process taking into account the time periods specified in Article 16 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties to the dispute agree otherwise. All presentations and statements made at hearings shall be

made in the presence of the Parties to the dispute. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party to the dispute shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to the dispute to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall upon request of a Party, provide a

non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

11. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. The arbitral tribunal shall provide its final report to all other Parties seven days after the report is presented to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the report publicly available subject to the protection of any confidential information contained in the report.

Article 14
Suspension and Termination of Proceedings

1. The Parties to the dispute may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of any Party to the dispute. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties to the dispute agree otherwise.

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

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

4. The Parties to the dispute shall notify the other Parties that the arbitral tribunal has been suspended, terminated or its authority has lapsed pursuant to Paragraph 1.

SECTION D

Implementation Provisions

Article 15
Implementation

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in Paragraph 1;

(b) whether such implementation can take place immediately; and

(c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in Paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, whenever possible, be mutually agreed by the Parties to the dispute. Where the Parties to the dispute are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the arbitral tribunal determine the reasonable

period of time. Unless the Parties to the dispute otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute.

5. Where a request is made pursuant to Paragraph 4, the chair of the arbitral tribunal shall present the Parties to the dispute with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

Article 16
Compliance Review

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 15.1 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal re-convened for this purpose (Compliance Review Tribunal).[3] Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of any Party to the dispute.

2. Such request may only be made after the earlier of:

   (a) the expiry of the reasonable period of time; or

   (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 15.1 (Implementation).

[3] Consultations under Article 6 (Consultations) are not required for these procedures

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Responding Party; and

(b) whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

4. The Compliance Review Tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the factual aspects of the case; and

(c) its findings on whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties to the dispute within 75 days of the date it re-convenes, and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.

6. Where an arbitral tribunal is requested to re-convene pursuant to Paragraph 1, it shall re-convene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to re-convene to the submission of its final report shall not exceed 120 days, unless Article 11.12 (Establishment and Re-convening of

Arbitral Tribunals) applies or the Parties to the dispute otherwise agree.

Article 17
Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under Article 15.1 (Implementation). However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under Article 15.1 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

   (a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in Article 15.1 (Implementation); or

   (b) a failure to comply with the obligation in Article 15.1 (Implementation) has been established in accordance with Article 16 (Compliance Review),

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under Paragraph 2, the Complaining Party may at any time thereafter notify the Responding Party and the other Parties that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification and impairment, and shall have the right to begin

suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under Paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to Paragraph 8; or

(b) a mutually agreed solution has been reached.

5. A notification made under Paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

(b) the Complaining Party may suspend concessions or other obligations in other sectors it if considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under Paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the

suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under Paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to Paragraph 8; or

(b) a mutually agreed solution has been reached.

5. A notification made under Paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

(b) the Complaining Party may suspend concessions or other obligations in other sectors it if considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under Paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the

SECTION E

Final Provisions

Article 18
Special and Differential Treatment Involving Newer ASEAN Member States

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving newer ASEAN Member States, particular sympathetic consideration shall be given to the special situation of newer ASEAN Member States. In this regard, Parties shall exercise due restraint in raising matters under these procedures involving a least-developed country Party. If nullification or impairment is found to result from a measure taken by a least-developed country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 17 (Compensation and Suspension of Concessions or other Obligations) or other obligations pursuant to these procedures.

2. Where one or more of the Parties to a dispute is a newer ASEAN Member State, the arbitral tribunal's reports shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a newer ASEAN Member State that form part of this Agreement which have been raised by the newer ASEAN Member State in the course of the dispute settlement procedures.

Article 19
Expenses

1. Unless the Parties to the dispute otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties to the dispute.

Article 20
Contact Points

1. Each Party shall designate a contact point for this Chapter and shall notify the other Parties of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Parties of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party or Parties through their designated contact points who shall provide confirmation of receipt of such documents in writing.

Article 21
Language

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

ANNEX ON RULES OF PROCEDURE FOR ARBITRAL TRIBUNAL PROCEEDINGS

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 17 (Consultations and Dispute Settlement).

Timetable

2. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to the dispute to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties to the dispute and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties to the dispute its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties to the dispute within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties to the dispute, an arbitral tribunal may, in consultation with the Parties to the dispute, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Operation of Arbitral Tribunals

7. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions.

8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties to the dispute, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties to the dispute.

11. The arbitral tribunal's deliberations shall be confidential. The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the

confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no *ex parte* communications with the arbitral tribunal concerning matters under consideration by it.

13. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings.

Written Submissions and Other Documents

14. Each Party to the dispute shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, a Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

15. A Party to the dispute shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Parties to the dispute. Third Parties shall receive the submissions of the Parties to the dispute to the first substantive hearing.

16. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party to the dispute may deliver a copy of the document(s) to the other Party to the dispute by facsimile, email or other means of electronic transmission.

17. A Party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral

tribunal proceeding by delivering a new document clearly indicating the changes.

Hearings

18. At the first substantive hearing with the Parties to the dispute, each Party to the dispute shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties to the dispute shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

19. All Third Parties shall be invited to present their views during a separate session of the first substantive hearing of the arbitral tribunal set aside for that purpose. All Third Parties may be present during the entirety of this session.

20. The Parties to the dispute and Third Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

Availability of Information

21. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall, upon request of another Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Information Gathering

22. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

23. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Reports

24. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

25. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

26. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

Venue

27. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Remuneration and Payment of Expenses

28. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains pursuant to Rule 10.

ANNEX ON OPTIONAL PROCEDURES FOR COMPOSING ARBITRAL TRIBUNALS

As provided in Article 11.3 (Establishment and Re-convening of Arbitral Tribunals), the Parties to the dispute may agree to use any of the following optional procedures, or variations thereof, for the purpose of composing an arbitral tribunal.

Optional Procedure A

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (*period to be agreed by the Parties to the dispute*) of the date of the receipt of a request to establish an arbitral tribunal. If either Party fails to appoint an arbitrator within such period, then the arbitrator appointed by the other Party shall act as the sole arbitrator of the arbitral tribunal.

2. Where two arbitrators are appointed in accordance with Paragraph 1, the Parties to the dispute shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal. If the Parties to the dispute have not designated the chair of the arbitral tribunal within (*period to be agreed by the Parties to the dispute*) of the appointment of the second arbitrator, the two arbitrators appointed in accordance with Paragraph 1 shall designate by common agreement the third arbitrator who shall chair the tribunal. If the chair of the arbitral tribunal has not been designated by the arbitrators within (*period to be agreed by the Parties to the dispute*) of the appointment of the second arbitrator, the Director-General of the WTO shall, at the request of any Party to the dispute, appoint the chair of the arbitral tribunal within (*period to be agreed by the Parties to the dispute*) of that request.

Optional Procedure B

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (*period to be agreed by the Parties to the dispute*) of the date of the receipt of a request to establish an arbitral tribunal.

2. The Parties to the dispute shall agree on the appointment of the third arbitrator within (*period to be agreed by the Parties to the dispute*) of the appointment of the third arbitrator who shall serve as chair of the arbitral tribunal. If all three appointments have not been made within (*period to be agreed by the Parties to the dispute*), the necessary appointments shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further (*period to be agreed by the Parties to the dispute*).

Optional Procedure C

1. Within (*period to be agreed by the Parties to the dispute*) of the date of the receipt of a request to establish an arbitral tribunal, each Party to the dispute shall provide to the other Parties to the dispute a list of up to *(number to be agreed by the Parties to the dispute)* nominees for appointment as arbitrators, including at least two individuals suitable for appointment as chair. The Parties to the dispute shall then consult with each other on the composition of the arbitral tribunal with the objective of appointing the arbitrators drawing as appropriate on the lists of nominees.

2. If all of the arbitrators have not been appointed within (*period to be agreed by the Parties to the dispute*) of the request to establish an arbitral tribunal, any of the remaining arbitrators shall be appointed at the request of any Party to the dispute by random drawing from the lists of nominees separated for this purpose into separate lists of nominations for appointment as chair or as a regular arbitrator.

CHAPTER 18

FINAL PROVISIONS

Article 1
Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 2
Relation to Other Agreements

1. Each Party reaffirms its rights and obligations under the WTO Agreement and other agreements to which the Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which the Parties are party.

3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.

4. Nothing in this Agreement shall prevent any individual ASEAN Member State from entering into any agreement with any one or more ASEAN Member State and/or Australia and/or New Zealand relating to trade in goods, trade in services, investment, and/or other areas of economic co-operation.

5. The provisions of this Agreement shall not apply to any agreement among ASEAN Member States. The provisions of this Agreement shall also not apply to any agreement involving any ASEAN Member State and/or Australia and/or

New Zealand unless otherwise agreed by the parties to that agreement.[1]

Article 3
Amended or Successor International Agreements

If any international agreement, or a provision therein, referred to in this Agreement (or incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

Article 4
Disclosure of Information

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

Article 5
Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

[1] This Paragraph does not apply to any future agreement concluded in accordance with this Agreement.

Article 6
Amendments

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

Article 7
Entry into Force

1. Each Party shall notify each other Party in writing upon completion of its internal requirements[2] necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2009 for any Party that has made such notifications provided that Australia, New Zealand and at least four ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1, 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.

3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2, this Agreement shall enter into force for any Party 60 days after the date of its notification referred to in Paragraph 1.

Article 8
Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving six months advance notice in writing to the other Parties.

[2] For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

2. This Agreement shall terminate if, pursuant to Paragraph 1:

(a) Australia withdraws;

(b) New Zealand withdraws; or

(c) this Agreement is in force for less than four ASEAN Member States.

Article 9
Review

The Parties shall undertake a general review of this Agreement with a view to furthering its objectives in 2016, and every five years thereafter, unless otherwise agreed by the Parties.

SIGNED at Cha-am, Phetchaburi, Thailand, this 27th day of February, two thousand and nine, in three copies in the English language.

For the Government of Brunei Darussalam:

For the Government of Australia:

For the Government of
the Kingdom of Cambodia:

For the Government of
New Zealand:

For the Government of
the Republic of Indonesia:

For the Government of
the Lao People's Democratic Republic:

For the Government of
Malaysia:

For the Government of
the Union of Myanmar:

For the Government of
the Republic of the Philippines:

Liuthugkiang

For the Government of
the Republic of Singapore:

For the Government of
the Kingdom of Thailand:

For the Government of
the Socialist Republic of Viet Nam: