Council of the European Union
General Secretariat

Brussels, 19 January 2017

WK 579/2017 INIT

LIMITE

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MEETING DOCUMENT

From:	European Commission
To:	Trade Policy Committee (Deputies)
Subject:	EU-Philippines FTA negotiations – EU legal text proposals

EUROPEAN COMMISSION
Directorate-General for Trade

Directorate C - Asia and Latin America
South and South East Asia, Australia, New Zealand

Brussels, 19 January 2017
Limited[1]

NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE

SUBJECT: ***EU-Philippines FTA negotiations – EU legal text proposals***

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OBJECTIVE: ***For information***

REMARKS:

Delegations will find attached the EU textual proposals for the EU-Philippines FTA on rules of origin (Section A), trade remedies, sanitary and phytosanitary measures, customs and trade facilitation, services and investment, public procurement, intellectual property, competition, SOEs and SMEs, as submitted to the Philippines on 12 January 2017, ahead of the second round to be held on 13-17 February in the Philippines.

These texts will be published in DG Trade's website together with the report of the round. Delegations are informed that these texts are identical to those submitted to Indonesia in December 2016 and shared with Delegations on 3 January 2017 (WK 2/2017 INIT).

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*This **document** is the European Union's (EU) proposal for a legal text on public procurement in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

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CHAPTER [XX]

PUBLIC PROCUREMENT

Article X.1

Scope of Application

This Chapter shall apply to the procurements set out in Annex/es [X-X] of this Agreement.

Article X.2

Application of Rules Set Out in the WTO Government Procurement Agreement

The Parties shall apply on a bilateral basis the Articles I-IV, VI-XV, XVI.1-XVI.3, XVIII of the WTO Government Procurement Agreement (hereinafter referred to as "GPA") to the procurement covered by this Chapter.

Article X.3

Additional Disciplines

In addition to the provisions referred to under Article X.2 (Application of Rules Set Out in the WTO Government Procurement Agreement), the Parties shall apply the following rules:

Local Establishment

1. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a legal person are accorded national treatment with regard to any government procurement of the Party in its territory. This obligation applies irrespectively of whether or not the procurement is covered by the Parties' annexes to the GPA or by Annex/es [X-X] of this Agreement. However, the general exceptions set forth in Article III of the GPA shall be applied.

Use of Electronic Means in Procurement

2. The Parties shall conduct covered procurement by electronic means to the widest extent possible and shall cooperate in developing and expanding the use of electronic means in government procurement systems.

   When conducting covered procurement by electronic means, a procuring entity shall use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and shall use electronic means for the submission of tenders to the widest extent practicable.

Electronic Publication of Procurement Notices

3. All the notices of intended procurement shall be directly accessible by electronic means free of charge through a single point of access on the internet. In addition, the notices may also be published in an appropriate paper medium. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

Sub-central Procurement Funded by Central Government Entities

4. With regard to procurement by sub-central entities which is funded fully or in part by central government entities listed in Annex X-A, the use of such funds shall not be conditional upon the application of discriminatory measures by the sub-central entity.

Registration Systems and Qualification Procedures

5. Where a Party or one of its procuring entities, pursuant to Article IX.1 of the GPA, maintains a supplier registration system, it shall ensure that interested suppliers have access to information on the registration system [if possible, through electronic means] and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

Conditions for Participation

6. Where a supplier, as a condition for the submission of a tender, must demonstrate to have prior experience, a procuring entity cannot impose that the supplier has prior experience in the territory of that Party. It shall be sufficient for him to demonstrate that this prior experience has been acquired in any territory.

Selective Tendering

7. Where, pursuant to Article IX.4 of the GPA, a selective tendering procedure is used, an invitation to submit a tender shall be addressed to a number of suppliers that is sufficient to ensure effective competition.

Environmental and Labour Considerations

8. A Party may:

   (a) allow contracting authorities to take into account environmental and labour considerations throughout the procurement procedure, provided they are non-discriminatory and they are linked to the subject-matter of the contract; and

   (b) take appropriate measures to ensure compliance with their obligations in the fields of environmental and labour law, including the obligations under Chapter [YY] (Trade and Sustainable Development).

Exchange of Statistics

9. The Parties shall exchange statistics on procurement on an annual basis.

Domestic Review Procedures

10. The Parties shall, as a general rule, provide for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

11. Where a review body has determined that there has been a breach or a failure as referred to in Article XVIII.1 of the GPA, each Party shall adopt or maintain procedures that provide for:

   (a) corrective action consisting in setting aside or ensuring the setting aside of decisions taken unlawfully by a procuring entity and declaring ineffective contracts concluded by a procuring entity in violation of this Chapter;

   (b) compensation for the loss or damages suffered.

Article X.4

Modifications and Rectifications to Coverage

1. A Party may modify or rectify its Annex/es [X-X].

Modifications

2. When a Party modifies an Annex, the Party shall:

   (a) notify the other Party in writing; and

   (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph 2 (b), a Party need not provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence; Government control or influence over the covered procurement of entities listed in Annex/es [X-X] to this Chapter is deemed to be effectively eliminated if the procuring entity performs a competitive activity.

4. If the other Party disputes that:

   (a) an adjustment proposed under subparagraph 2 (b) is adequate to maintain a comparable level of mutually agreed coverage;

   (b) the modification covers an entity over which the Party has effectively eliminated its control or influence under paragraph 3;

   it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2 (a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter [YY] (Dispute Settlement).

Rectifications

5. The following changes to a Party's Annexes shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in the Chapter:

   (a) a change in the name of an entity;

   (b) a merger of two or more entities listed within an Annex; and

   (c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

6. In the case of proposed rectifications to a Party's Annexes, the Party shall notify the other Party every two years [, in line with the cycle of notifications provided for under the GPA,] following the entry into force of this Chapter.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided

for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

[Article X.5
Institutional Provisions]

[placeholder]

1. […] On request of a Party, the [joint working body defined by the Agreement] shall meet to address matters related to the implementation and operation of this Chapter, such as:

   (a) the modification of Annex/es [X-X];

   (b) issues regarding government procurement that are referred to it by a Party;

   (c) any other matter related to the operation of this Chapter.

ANNEX [X-X]

COVERAGE

[…]

*This **document** is the European Union's (EU) proposal for a legal text on trade remedies in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

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CHAPTER [XX]

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

Article X.1

General Provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

2. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

Article X.2

Transparency

1. The Parties, agree that anti-dumping and countervailing proceedings should be applied in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.

2. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure to interested parties of all essential facts and considerations which form the basis for the decision to apply measures. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.

3. Provided it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

Article X.3

Consideration of Public Interest

A Party shall not impose anti-dumping or countervailing measures where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. In determining the public interest, the Party shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, to the extent the relevant information provided to the investigating authorities.

Article X.4

Lesser Duty Rule

An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and the Party shall endeavour to ensure that the amount of this duty is less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

Article X.5

Exclusion from Dispute Settlement

The provisions of this Section shall not be subject to Chapter/Title [YY] (Dispute Settlement).

SECTION B

GLOBAL SAFEGUARD MEASURES

Article X.6

General Provisions

1. The Parties affirm their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

2. [A Party shall not apply with respect to the same good at the same time:

   (a) a bilateral safeguard measure under Section C (Bilateral Safeguard Clause) of this Chapter; and

   (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.]

[*the above paragraph, subject to the inclusion of a possible bilateral safeguard clause*]

3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

Article X.7

Transparency

1. Notwithstanding Article X.6 (General Provisions), the Party initiating a global safeguard investigation or intending to impose global safeguard measures shall provide, at the request of the other Party and provided that it has a substantial interest, immediately *ad hoc* written notification of all pertinent information leading to the initiation of a global safeguard investigation and, as the case may be, the proposal to impose the global safeguard measures, including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.

2. When imposing global safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, it shall notify the other Party and give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the Party may adopt the definitive global safeguard measures. The possibility to hold consultations should be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

Article X.8

Exclusion from Dispute Settlement

The provisions of this Section referring to WTO rights and obligations shall not be subject to Title YY (Dispute Settlement).

[SECTION C

BILATERAL SAFEGUARD CLAUSE]

[*An EU proposal for a bilateral safeguard clause may be submitted at a later stage*]

*This **document** is the European Union's (EU) proposal for a legal text on competition in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

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CHAPTER [XX]

COMPETITION

Article X.1

Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anti-competitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

SECTION A

ANTITRUST AND MERGERS

Article X.2

Legislative Framework

1. Each Party shall (adopt or) maintain a competition law which applies to all sectors of the economy[1] and addresses all of the following practices in an effective manner:

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

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

[1] For greater certainty, competition rules in the EU apply to the agricultural sector in accordance with Regulation 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products and its subsequent amendments or replacements, if any (Official Journal L347/2013).

(c) concentrations between enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. All enterprises, private or public, shall be subject to the competition law referred to in this Article. The application of the competition law should not obstruct the performance, in law or in fact, of particular tasks of public interest that may be assigned to the enterprises in question. Exemptions to the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

Article X.3

Implementation

1. Each Party shall (establish or) maintain an operationally independent authority responsible for, and appropriately equipped with the powers and resources necessary for the full application and the effective enforcement of the competition law referred to in Article X.2 (Legislative Framework).

2. The Parties shall apply their respective competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the enterprises concerned, irrespective of their nationality or ownership status.

Article X.4

Cooperation

1. In order to fulfill the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases.

2. For this purpose, the competition authorities of the Parties will endeavour to coordinate, where this is possible and appropriate, their enforcement activities relating to the same or related cases.

3. To facilitate the cooperation referred to in paragraph 1, the Parties' competition authorities may exchange information.

Article X.5

Dispute Settlement

The provisions on dispute settlement in Chapter/Title [YY] (Dispute Settlement) of this Agreement shall not apply to this Section.

SECTION B

SUBSIDIES

Article X.6

Principles

The Parties agree that subsidies can be granted by a Party when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, subsidies granted to enterprises providing goods or services should not be granted by a Party when they negatively affect, or are likely to affect, competition and trade.

Article X.7

Definition and Scope

1. For the purposes of this Chapter, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as "SCM Agreement") irrespective of whether it is granted to an enterprise supplying goods or services.[2]

2. A subsidy shall be subject to this Chapter only if this subsidy is determined to be specific in accordance with the provisions of and within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.11 (Subsidies Subject to Conditions) shall be deemed to be specific.

3. Subsidies to all enterprises, including public and private enterprises, shall be subject to this Chapter. The application of the rules in this Section must not obstruct the performance, in law or in fact, of particular services of public interest that may be assigned to the enterprises in question. Exemptions should be limited to tasks of public interest, proportionate to public policy objectives assigned to them and transparent.

4. Article X.10 (Consultations) shall not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.

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[2] This Article does not prejudice the outcome of future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions at the WTO level, the Parties may adopt a decision by [relevant committee] to update this Agreement in this respect.

Article X.8

Relationship with the WTO

The provisions in this Chapter shall be applied without prejudice to the rights and obligations of each Party under Article XV GATS, Article VI of GATT 1994, the SCM Agreement and the WTO Agreement on Agriculture.

Article X.9

Transparency

1. Each Party shall notify every two years the legal basis, form, amount or budget and, where possible, the recipient of the subsidy provided within the reporting period.

2. Such notification is deemed to have been fulfilled if the relevant information is made available by the Parties or on their behalf on a publicly accessible website, as from 31 December of the subsequent calendar year. The first notification shall be made available no later than two years after the entry into force of this Agreement.

3. For subsidies notified under the SCM Agreement, such notification shall be deemed to have been fulfilled whenever the Parties comply with their notification obligations under Article 25 of the SCM Agreement, provided that the notification contains all the information required under paragraph 1.

Article X.10

Consultations

1. If a Party considers that a subsidy granted by the other Party, which is not covered by Article X.11 (Subsidies Subject to Conditions), may negatively affect the first Party's interests, the first Party may express its concern to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to such a request.

2. [placeholder for a forthcoming proposal on process].

3. To facilitate the consultation, the requested Party shall provide information on the subsidy in question within no more than 60 days from the date of reception of the request.

4. If the requesting Party, after receiving information on the subsidy in question, considers that the subsidy concerned by the consultations negatively affects or may negatively affect in a disproportionate manner, the requesting Party's trade or investment interests, the requested Party will use its best endeavours to eliminate or minimise the negative

effects on the requesting Party's trade and investment interests caused by the subsidy in question.

Article X.11

Subsidies Subject to Conditions

The Parties shall apply conditions to the following subsidies, in so far as they negatively affect trade or investment of the other Party or are likely to do so:

(a) A legal arrangement whereby a government, directly or indirectly, is responsible to cover debts or liabilities of certain enterprises is allowed provided that the coverage of the debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of such responsibility;

(b) Subsidies to insolvent or ailing enterprises in various forms (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) with a duration above one year are allowed provided that a credible restructuring plan has been prepared which is based on realistic assumptions with the view to ensuring the return of the insolvent or ailing enterprises within a reasonable time to long-term viability and with the enterprise contributing itself to the costs of restructuring.[3, 4]

Article 12

Use of Subsidies

Each Party shall ensure that enterprises use the subsidies provided by a Party only for the public policy objective for which the subsidies have been granted.

Article X.13

Dispute Settlement

Article X.10 (Consultations) shall not be subject to the dispute settlement provisions of this Agreement.

SECTION C

[3] This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely to keep an ailing firm in business for the time necessary to adopt a restructuring or liquidation plan.

[4] Small- and medium-sized enterprises are not required to contribute themselves to the costs of restructuring.

GENERAL PROVISIONS

Article X.14

Confidentiality

1. When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.

2. When a Party communicates information under this Agreement, the receiving Party shall maintain the confidentiality of the communicated information.

Article X.15

Review Clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the [appropriate body established by the Agreement]. The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.

*This **document** is the European Union's (EU) proposal for a legal text on the concept of originating products in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

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PROTOCOL [XX]

CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE COOPERATION

SECTION 1

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Protocol:

(a) "manufacture" means any kind of working or processing, manufacturing, producing, processing or assembling goods;

(b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;

(c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;

(d) "good" means both a material and a product;

(e) "customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);

(f) "value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Union or in the Philippines;

(g) "ex-works price" means the price paid for the product ex works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs related to its production, minus any internal taxes which are, or may be, repaid when the product obtained is exported.

Where the actual price paid does not reflect all costs related to the manufacturing of the product which are actually incurred in the European Union or in the Philippines, the ex-works price means the sum of all those costs, minus any internal taxes which are, or may be, repaid when the product obtained is exported;

Where the last working or processing has been subcontracted to a manufacturer, the term "manufacturer" referred to in paragraph (g) may refer to the enterprise that has employed the subcontractor.

(h) "chapters" and "headings" and "sub-headings" mean the chapters, the headings (four digit codes) and sub-headings (six digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Protocol as the "Harmonized System" or "HS";

(i) "classified" refers to the classification of a product or material under a particular chapter, heading, or sub-heading of the Harmonized System;

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

(k) "territories" includes territorial seas;

(l) "Party" refers to the Union or to the Philippines;

(m) "fungible materials" means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product;

(n) "exporter" means a person located in the exporting Party who is exporting the goods to the other Party and who is able to prove the origin of the exported goods, whether or not he is the manufacturer and whether or not he himself carries out the export formalities.

SECTION 2

DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"

Article 2

General Requirements

For the purpose of implementing this Agreement, the following products shall be considered as originating in a Party:

(a) products wholly obtained in a Party within the meaning of Article 4 (Wholly Obtained Products);

(b) products obtained in a Party incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Party concerned within the meaning of Article 5 (Sufficiently Worked or Processed Products).

Article 3

Cumulation of Origin

Notwithstanding Article 2 (General Requirements), products shall be considered as originating in a Party if such products are obtained there by incorporating materials originating in the other Party, provided that the working or processing carried out goes beyond the operations referred to in Article 7 (Insufficient Working or Processing).

Article 4

Wholly Obtained Products

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

   (a) plant or plant products grown, cultivated, harvested, picked or gathered there;

   (b) live animals born and raised there;

   (c) products obtained from live animals raised there;

   (d) products obtained from slaughtered animals born and raised there;

   (e) products obtained by hunting, trapping, fishing, gathering or capturing there;

   (f) products of aquaculture, where the fish, crustaceans and molluscs are born and raised there;

   (g) minerals or other naturally occurring substances, not included in subparagraphs (a) through (f), extracted or taken from the soil or the seabed there;

   (h) products of sea fishing and other products taken from the sea outside any territorial seas by their vessels;

(i) products made aboard their factory ships exclusively from products referred to in (h);

(j) products other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that a Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(k) a product that is:

(i) waste or scrap derived from manufacture there; or

(ii) waste or scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials; and

(l) goods produced there exclusively from products referred to in subparagraphs (a) through (k), or from their derivatives.

2. The terms "vessels" and "factory ships" in subparagraph 1 (h) and (i) shall apply only to vessels and factory ships:

(a) which are registered in a Member State of the Union or in the Philippines;

(b) which sail under the flag of a Member State of the Union or of the Philippines; and

(c) which meet one of the following conditions:

(i) they are at least 50% owned by nationals of a Member State of the Union or of the Philippines; or

(ii) they are owned by juridical persons:

(A) which have their head office and their main place of business in a Member State of the Union or in the Philippines; and

(B) which are at least 50% owned by a Member State of the Union or by the Philippines, by public entities or nationals of one of those Parties.

Article 5

Sufficiently Worked or Processed Products

1. For the purposes of Article 2 (General Requirements), products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex (Product-Specific Rules of Origin) are fulfilled.

2. The conditions referred to above indicate, for all products covered by the Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials.

   It follows that if a product which has acquired originating status, by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

Article 6

Tolerances

1. By way of derogation from Article 5 (Sufficiently Worked or Processed Products) and subject to paragraphs 2 and 3 of this Article, non-originating materials which, according to the conditions set out in the list in Annex (Product-Specific Rules of Origin) are not to be used in the manufacture of a given product may nevertheless be used, provided that their total value or net weight assessed for the product does not exceed:

   (a) 10% of the weight of the product for products falling within Chapters 2 and 4 to 24 of the Harmonized System, other than processed fishery products of Chapter 16;

   (b) 10% of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 of the Harmonized System, for which the tolerances mentioned in Notes 6 and 7 of Annex (Product-Specific Rules of Origin), shall apply.

2. Paragraph 1 shall not allow exceeding any of the percentages for the maximum value or weight of non-originating materials as specified in the rules laid down in the list in Annex (Product-Specific Rules of Origin).

3. Paragraphs 1 and 2 shall not apply to products wholly obtained in the territory of a Party within the meaning of Article 4 (Wholly Obtained Products). However, without prejudice to Articles 7 (Insufficient Working or Processing) and 8 (Unit of Qualification), the tolerance provided for in those paragraphs shall nevertheless apply to the sum of all the materials which are used in the manufacture of a product and for which the rule laid down in the list in Annex (Product-Specific Rules of Origin) for that product requires that such materials be wholly obtained.

Article 7

Insufficient Working or Processing

1. Without prejudice to paragraph 3, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether

or not the requirements of Article 5 (Sufficiently Worked or Processed Products) are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking-up and assembly of packages;

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

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

(e) simple painting and polishing operations;

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

(g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;

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

(i) sharpening, simple grinding or simple cutting;

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

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

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

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

(n) simple addition of water or dilution or dehydration or denaturation of products;

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

(p) slaughter of animals;

(q) a combination of two or more of the operations specified in subparagraphs (a) to (p).

2. For the purpose of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those

operations are required for their performance.

3. All operations carried out either in the Union or in the Philippines on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

Article 8

Unit of Qualification

1. The unit of qualification for the application of the provisions of this Protocol shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System.

2. When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual item shall be taken account when applying the provisions of this Protocol.

Article 9

Accessories, Spare Parts and Tools

Accessories, spare parts, tools and instructional or other information materials dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Article 10

Sets

A set, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Where a set is composed of originating and non-originating components, the set as a whole shall be regarded as originating, provided that the value of the non-originating components does not exceed 15 per cent of the ex-works price of the set.

Article 11

Neutral Materials and Elements

The following neutral materials and elements which may be used in the manufacture of a product shall be disregarded to determine whether a product is originating:

(a) energy and fuel;

(b) plant and equipment, including materials used and to be used for their maintenance;

(c) machines and tools and dies and moulds;

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

(e) lubricants, greases, compounding materials and other materials used in manufacture or used to operate equipment and buildings;

(f) gloves, glasses, footwear, clothing, safety equipment and supplies;

(g) equipment, devices and supplies used for testing or inspecting the good; catalyst and solvent;

(h) other goods which are not incorporated into the final composition of the product but whose use in the manufacture of the product can be reasonably demonstrated to be a part of that manufacture.

Article 12

Accounting Segregation

1. If originating and non-originating fungible materials are used in the working or processing of a product, competent authorities may, at the written request of economic operators, authorise the management of materials using the accounting segregation method without keeping the materials in separate stocks.

2. Competent governmental authorities may make the granting of authorisation referred to in paragraph 1 subject to any conditions they deem appropriate.

3. The authorisation shall be granted only if by use of the accounting segregation method it can be ensured that, at any time, the number of products obtained which could be considered as originating in a Party is the same as the number that would have been obtained by using a method of physical segregation of the stocks.

4. If authorised, the accounting segregation method and its application shall be recorded on the basis of the general accounting principles applicable in the Union or in the Philippines, depending on where the product is manufactured.

5. A manufacturer using the accounting segregation method shall make out a proof of origin for the quantity of products which may be considered as originating in the exporting Party. At the request of the customs authorities or competent governmental authorities of the exporting Party, the beneficiary shall provide a statement of how the quantities have been managed.

6. Competent authorities shall monitor the use made of the authorisation referred to in

paragraph 3 and may withdraw it if the manufacturer makes improper use of it or fails to fulfil any of the other conditions laid down in this protocol.

Article 13

Packing Materials and Containers for Shipment and for Retail Sale

1. Packing materials and containers for shipment are disregarded in determining whether a product is originating.

2. Packaging materials and containers in which a product is packaged for retail sale, if classified with the good, shall be included for the purposes of determining origin.

SECTION 3

TERRITORIAL REQUIREMENTS

Article 14

Non-Alteration

1. The originating products declared for importation in a Party shall be the same products as exported from the other Party in which they obtained originating status. They shall not have been altered, transformed in any way or subjected to operations other than to preserve them in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party, prior to being declared for home use.

2. Storage or exhibition of products may take place in a non-Party provided that they remain under customs supervision in the non-Party.

3. Without prejudice to the provisions of Section [XX] (Administrative Cooperation), the splitting of consignments may take place in the territory of a non-Party where carried out by the exporter or under his responsibility provided they remain under customs supervision in the non-Party.

4. Compliance with paragraphs 1 to 3 shall be considered as satisfied unless the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.

Article 15

Principle of Territoriality

1. The conditions set out in Section 2 (Definition of the Concept of "Originating Products") relating to the acquisition of originating status must be fulfilled without interruption in a Party.

2. If originating goods exported from a Party to a non-Party return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

   (a) the returning goods are the same as those exported; and

   (b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that non-Party or while being exported.

SECTION 4

Article 16

Prohibition of Drawback of, or Exemption from, Customs Duties

[placeholder]

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CHAPTER [XX]

CUSTOMS AND TRADE FACILITATION

Article X.1

Objectives

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

2. To this end, the Parties agree that legislation shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud and to promote legitimate trade.

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

Article X.2

Customs Cooperation and Mutual Administrative Assistance

1. The Parties shall cooperate on customs matters between their respective authorities in order to ensure that the objectives set out in Article X.1 (Objectives) are attained.

2. The Parties shall develop cooperation, *inter alia*:

   (a) exchanging information concerning customs legislation, its implementation, and customs procedures; particularly in the following areas:

      (i) simplification and modernisation of customs procedures;

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

      (iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management.

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

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

(d) strengthening their cooperation in the field of customs in international organisations such as the World Trade Organization (hereinafter referred to as "WTO") and the WCO;

(e) establishing, where relevant and appropriate, mutual recognition of trade partnership programmes and customs controls including equivalent trade facilitation measures; and

(f) fostering cooperation between customs and other government authorities or agencies in relation to authorised operator programmes. This collaboration may be achieved, inter alia, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Protocol YY.

Article X.3

Customs Provisions and Procedures

1. The Parties shall ensure that their respective customs provisions and procedures shall be based upon:

(a) international instruments and standards applicable in the area of customs and trade, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, as well as the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO;

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

(c) legislation that is proportionate and non-discriminatory, avoids unnecessary burdens on economic operators, provides for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensures safeguards against fraud and illicit or damageable activities; and

(d) rules that ensure that any penalty imposed for breaches of customs regulations or procedural requirements is proportionate and non-discriminatory and that their application shall not unduly delay the release of the goods.

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

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

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

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

Article X.4

Release of Goods

Each Party shall adopt or maintain customs procedures that:

(a) provide for the immediate release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations. Each Party shall work to further reduce release times and release the goods without undue delay;

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

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

Article X.5

Simplified Customs Procedures

1. Each Party shall provide for simplified customs procedures that are transparent and efficient in order to reduce costs and increase predictability for economic operators, including for small and medium-sized enterprises. Easier access to customs simplifications shall also be provided for authorised operators according to objective and non-discriminatory criteria.

2. A single administrative document or electronic equivalent shall be used for the purpose of completing the formalities connected with placing the goods under a customs procedure.

3. Each Party shall apply modern customs techniques, including risk assessment and post-clearance audit methods in order to simplify and facilitate the entry and the release of goods.

4. Each Party shall promote the progressive development and use of advanced systems, including those based upon information and communications technology, to facilitate the electronic exchange of data between traders, customs administrations and other related agencies.

Article X.6

Transit and Transhipment

1. Each Party shall ensure the facilitation and effective control of transhipment operations and transit movements through their respective territories.

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

3. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit.

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

Article X.7

Risk Management

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

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

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

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

Article X.8

Post-clearance Audit

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

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

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

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

Article X.9

Authorised Operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria, hereinafter referred to as authorised operators.

2. The specified criteria to qualify as authorised operators shall be related to compliance with requirements specified in the Parties' laws, regulations or procedures. The specified criteria, which shall be published, may include:

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

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

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

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

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

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

4. The partnership programme for operators shall include the following benefits:

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

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

(c) priority treatment if selected for control;

(d) rapid release time as appropriate;

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

(f) use of comprehensive guarantees or reduced guarantees;

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

(h) clearance of goods at the premises of the authorised operator or another place authorised by customs.

Article X.10

Publication and Availability of Information

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

   (a) relevant notices of an administrative nature;

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

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

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

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

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

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

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

   (i) appeal procedures;

   (j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
   (k) procedures relating to the administration of tariff quotas;

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

   (m) points of contact for information enquiries.

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

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

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

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

(c) contact information on enquiry points.

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

Article X.11

Advance Rulings

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

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

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

4. Each Party shall publish, at least:

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

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

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

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

   Advance rulings cannot be retroactively amended or revoked and are only valid in respect of goods for which customs formalities are completed after the start date of validity of the ruling.

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

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

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

9. Advance rulings shall be issued with regard to:

   (a) the tariff classification of goods;

   (b) the origin of goods; and

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

Article X.12

Fees and Charges

1. Each Party shall prohibit administrative fees having an equivalent effect to import or export duties and charges.

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

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

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

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

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

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

   Fees and charges shall not exceed the approximate cost of the service provided and shall not be calculated on an ad valorem basis;

The information on fees and charges shall be published via an officially designated medium, and if feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and

New or amended fees and charges shall not be imposed until information in accordance with the preceding subparagraph is published and made readily available.

Article X.13

Customs Brokers

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

Article X.14

Customs Valuation

1. Each Party shall determine the customs value of goods in accordance with the Agreement on the Implementation of Article VII of the GATT 1994. Its provisions are hereby incorporated into and made part of this Agreement. Minimum customs values shall not be used.

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

Article X.15

Pre-shipment Inspections

The Parties shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

Article X.16

Review and Appeal

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

2. Appeal or review shall include:

   (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or

   (b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 2 (a) is not given within the period of time provided for in its laws and regulations or without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority according to the legislation of the Parties.

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

Article X.17

Relations with the Business Community

The Parties agree:

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

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

Article X.18

Temporary Admission

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

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

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

(b) professional equipment (equipment for the press, for sound or television broadcasting which is necessary for representatives of the press, of broadcasting or television organizations visiting the territory of another country for purposes of reporting, in order to transmit or record material for specified programmes; cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or (except in the case of hand tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects; ancillary apparatus for the equipment mentioned above, and accessories therefor); component parts imported for repair of professional equipment temporarily admitted;

(c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation (packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films; other goods imported in connection with a commercial operation);

(d) goods imported in connection with a manufacturing operation (matrices, blocks, plates, moulds, drawings, plans, models and other similar articles; measuring, controlling and checking instruments and other similar articles; special tools and instruments, imported for use during a manufacturing process); replacement means of production (instruments, apparatus and machines made available to a customer by a supplier or repairer, pending the delivery or repair of similar goods);

(e) goods imported exclusively for educational, scientific or cultural purposes (scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural

activities); spare parts for scientific equipment and pedagogic material which has been granted temporary admission; tools specially designed for the maintenance, checking, gauging or repair of such equipment;

(f) personal effects (all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes); goods imported for sports purposes (sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory of temporary admission);

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

(h) goods imported for humanitarian purposes (medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes); and

(i) animals imported for specific purposes (dressage, training, breeding, shoeing or weighing, veterinary treatment, testing (for example, with a view to purchase), participation in shows, exhibitions, contests, competitions or demonstrations, entertainment (circus animals, etc.), touring (including pet animals of travellers), exercise of function (police dogs or horses; detector dogs, dogs for the blind, etc.), rescue operations, transhumance or grazing, performance of work or transport, medical purposes (delivery of snake poison, etc.)).

Article X.19

Institutional Provisions

[placeholder – joint working body in charge of ensuring the proper functioning of this Chapter and of other customs-related provisions of the Agreement, including the enforcement of Intellectual Property Rights by Customs, Rules of Origin and Administrative Cooperation, and Mutual Administrative Assistance in Customs Matters.]

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CHAPTER [XX]

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

Article X.1

Objectives

The objectives of this Chapter are to:

(a) facilitate the production and commercialisation of innovative and creative products in each Party; and

(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Article X.2

Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the Agreement on Trade-related Aspects of Intellectual Property (hereinafter referred to as "TRIPS Agreement") contained in Annex IC to the WTO Agreement. This chapter shall complement and further specify the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.

2. For the purpose of this Chapter, intellectual property refers at least to all categories of intellectual property that are the subject of Sub-Section 1 (Copyright and Related Rights) to Sub-Section 7 (Plant Varieties) of Section B (Standards Concerning Intellectual Property Rights). The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the

Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as "Paris Convention").

3. This Chapter does not preclude the Parties from applying provisions of domestic law introducing higher standards for the protection and enforcement of intellectual property, provided that they do not violate the provisions of this Chapter.

Article X.3

Exhaustion

Each Party shall provide for a regime of national or regional exhaustion of intellectual property rights[1].

Article X.4

National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights, subject to the exceptions provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last revised at Paris on 24 July 1971 (hereinafter referred to as "Berne Convention"), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "Rome Convention"), or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington, D.C., on May 26, 1989. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement.

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

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

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

3. Paragraph 1 and 2 do not apply to procedures provided in multilateral agreements concluded under the auspices of World Intellectual Property Organisation (hereinafter

[1] In the area of copyright and related rights, exhaustion of rights applies only to the distribution to the public by sale or otherwise of the original of the works or of copies thereof.

referred to as "WIPO") relating to the acquisition or maintenance of intellectual property rights.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

Copyright and Related Rights

Article X.5

International Treaties

1. The Parties shall comply with the following international agreements:

   (a) the Berne Convention;

   (b) the Rome Convention;

   (c) The WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and

   (d) The WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.

2. The Parties aim to comply with the provisions of the Beijing Treaty on Audiovisual Performances, adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on 24 June 2012, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013.

Article X.6

Authors

Each Party shall provide for authors to have the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public, by sale or otherwise of the original of their works or of copies thereof;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies.

Article X.7

Performers

Each Party shall provide for performers to have the exclusive right to authorise or prohibit:

(a) the fixation[2] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

(d) the making available to the public, by wire or wireless means, of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and

(f) the commercial rental to the public of the fixation of their performances.

Article X.8

Producers of Phonograms

Each Party shall provide for phonogram producers to have the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;

(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;

[2] Fixation means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

(c) the making available to the public, by wire or wireless means, of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

Article X.9

Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite in such a way that members of the public may access them from a place and at a time individually chosen by them;

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite; and

(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article X.10

Right to Remuneration for Broadcasting and Communication to the Public

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public.

2. Each Party shall provide that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

Article X.11

Term of Protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for seventy years after his death, irrespective of the date when the work is lawfully made available to the public.

2. The term of protection of a musical composition with words shall expire seventy years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.

3. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

4. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. The term of protection of cinematographic or audiovisual works shall expire seventy years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

7. The rights of broadcasting organisations shall expire fifty years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

8. The rights of performers shall expire not less than 50 years after the date of the performance. However, if a fixation of the performance other than in a phonogram is lawfully published or lawfully communicated to the public within that period; those rights shall expire not less than fifty years from the date of the first such publication or the first such communication to the public, whichever is earlier. If a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within that period, the rights shall expire seventy years from the date of the first such publication or the first such communication to the public, whichever is earlier.

9. The rights of producers of phonograms shall expire fifty years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire seventy years from the date of the first lawful publication. If no lawful publication has taken place within fifty years after the first fixation is made, and if the phonogram has been lawfully communicated to the public within this period the said rights shall expire seventy years from the date of the first lawful communication to the public. Each Party may adopt effective measures in order to ensure that the profit generated during the twenty years protection beyond the initial fifty years are shared fairly between the performers and producers.

10. The rights of producers of the first fixation of a film shall expire fifty years after the fixation is made. If the film is lawfully published or lawfully communicated to the public during that period, those rights shall expire fifty years from the date of the first such publication or the first such communication to the public, whichever is earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

11. The terms laid down in this Article shall be calculated from the 1st January of the year following the event.

12. The terms of protection may exceed the periods provided for in this Article.

Article X.12

Resale Right

1. Each Party shall provide, for the benefit of the author of works of graphic or plastic art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work, after the first transfer of that work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and when the resale price does not exceed a minimum amount.

4. Each Party shall provide that authors who are nationals of third countries and their successors in title enjoy the resale right in accordance with the Agreement and the legislation of the Party concerned only if legislation in the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Party concerned and their successors in title.

Article X.13

Collective Management of Rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject-matter in the territories of the Parties and the transfer of rights revenue for the use of such works or other protected subject-matter.

2. The Parties agree to promote the transparency of collective management organisations, in particular as regards the rights revenue they collect, deductions they apply to such revenue, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party undertakes to ensure that when a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party in a representation agreement, the representing organisation does not discriminate against entitled members of the organisation represented.

4. The representing collective management organisation must pay accurately, regularly and diligently amounts owed to the represented collective management organisation and provide the represented organisation with information on the amount of rights revenue collected on its behalf and the deductions made.

Article X.14

Exceptions and Limitations

1. Each Party shall provide for exceptions and limitations to the exclusive rights only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

   (a) a transmission in a network between third parties by an intermediary; or

   (b) a lawful use

   of a work or other subject matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.

Article X.15

Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

   (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;

   (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or

   (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of any effective technological measures.

3. For the purposes of this Article, the term "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or related right as provided for by domestic legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the objective of protection.

Article X.16

Obligations Concerning Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights:

   (a) the removal or alteration of any electronic rights-management information; or

   (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights-management information has been removed or altered without authorisation.

2. For the purposes of this Sub-Section, "rights-management information" means any information provided by right holders which identifies the work or other subject matter referred to in this Chapter, the author or any other right holder, information about the terms and conditions of use of the work or other subject matter, or any numbers or codes that represent such information.

3. The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Chapter.

SUB-SECTION 2

Trademarks

Article X.17

International Agreements

Each Party:

(a) shall comply with the Trademark Law Treaty and with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 ("Nice Classification");

(b) shall accede to the Protocol related to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007; and

(c) shall make all reasonable efforts to accede to the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006.

Article X.18

Rights Conferred by a Trademark

1. A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

   (a) any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;

   (b) any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing, in the course of trade, goods into the territory of the Party where the trademark is registered without being released for free circulation there, where such

goods, including packaging, come from third countries and bear without authorisation a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark[3].

3. The entitlement of the proprietor of the trademark shall lapse if, during the proceedings to determine whether there was a breach of the registered trademark, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Article X.19

Registration Procedure

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration issued by the relevant trademark administration shall be notified in writing, duly reasoned and open to challenge.

2. Each Party shall provide for the possibility to oppose applications to register trademarks or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

Article X.20

Well-known Trademarks

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

Article X.21

Exceptions to the Rights Conferred by a Trademark

[3] The Parties may take additional appropriate measures with a view to ensure the smooth transit of generic medicines.

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including geographical indications, and they may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

2. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

   (a) his own name or address;

   (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;

   (c) the trademark where it is necessary to indicate the intended purpose of a good or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.

3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and within the limits of the territory in which it is recognised.

Article X.22

Revocation of a Trademark

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous five-year period of, the trademark has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption of use takes place only after the holder has been informed that the application for revocation may be filed.

2. A trademark shall also be liable to revocation if, after the date on which it was registered:

   (a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered; or

   (b) in consequence of the use made of it by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, it is liable to

mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Article X.23

Bad Faith Applications

A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

SUB-SECTION 3

Designs

Article X.24

International Agreements

Each Party shall make all reasonable efforts to accede to the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs done at Geneva on 2 July 1999.

Article X.25

Protection of Registered Designs

1. Each Party shall provide for the protection of independently created designs that are new and are original[4]. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.

2. The holder of a registered design shall have the right at least to use it and to prevent third parties not having the holder's consent at least from using and notably making, offering for sale, selling, putting on the market, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

[4] For the purpose of this Article, a Party may consider that a design having individual character is original.

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

4. "Normal use" in subparagraph 3 (a) shall mean use by the end user, excluding maintenance, servicing or repair work.

Article X.26

Term of Protection

The duration of protection available shall amount to twenty-five years from the date of filing the application.

Article X.27

Protection Conferred to Unregistered Designs

1. The European Union and the Philippines shall provide the legal means to prevent the use of the unregistered designs, only if the contested use results from copying the unregistered design. Such use shall at least cover the offering for sale, putting on the market, importing and exporting the product concerned.

2. The duration of protection for unregistered designs, as provided for in paragraph 1, shall amount to at least three years from the date on which the design was first made available to the public in the territory of the respective signatory.

Article X.28

Exceptions and Exclusions

1. Each Party may establish limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the holder of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall not extend to designs dictated essentially by technical or functional considerations. In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions for the product in which incorporated or to which the design is applied to be mechanically connected to, or placed in, or around or contact with another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design may subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Article X.29

Relationship to Copyright

A design shall also be eligible for protection under the law of copyright of a Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION 4

Geographical Indications

Article X.30

Scope

[Purpose of the Article: delimitation of scope for product category and origin]

This Sub-Section applies to the recognition and protection of geographical indications originating in the territories of the Parties.

Geographical indications of a Party which are to be protected by the other Party shall only be subject to this Sub-Section if covered by the scope of the legislation referred to in Article X.31 (Procedures).

Article X.31

Procedures

[Purpose of the Article: confirmation of compatibility of legislation with common scope of the Parties' legislation, registration of existing GIs after prior examination]

1. Having examined the legislation of the Philippines listed in Section A of Annex [XX]-A, the European Union concludes that this legislation meets the elements laid down in Section B of Annex [XX]-A *[those elements that are deemed compatible]*.

2. Having examined the European Union legislation listed in Section A of Annex [XX]-A, the Philippines concludes that this legislation meets the elements laid down in Section B of Annex [XX]-A.

3. Following the completion of an opposition procedure in accordance with the criteria set out in Annex [XX]-B and an examination of the geographical indications of the European Union listed in Annex [XX]-C, which have been registered by the European Union under the legislation referred to in paragraph 2, the Philippines shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

4. Following the completion of an opposition procedure in accordance with the criteria set out in Annex [XX]-B and an examination of the geographical indications of the Philippines listed in Annex [XX]-C, which have been registered by the Philippines under the legislation referred to in paragraph 1, the European Union shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

Article X.32

Amendment of the List of Geographical Indications

[Purpose of the Article: addition to each other's registers of new GIs after examination and objection]

The Parties agree on the possibility to amend the list of geographical indications to be protected in Annex [XX]-C in accordance with the procedure set out in Article X.69 (Institutional Provisions). New geographical indications shall be added following the completion of the opposition procedure and their examination as referred to in paragraphs 3 or 4 of Article X.31 (Procedures).

Article X.33

Protection of Geographical Indications

[Purpose of the Article: setting of high protection level. Treatment of GIs that lost protection in country of origin and person's names]

1. The geographical indications listed in Annex [XX]-C shall be protected against:

   (a) any direct or indirect commercial use of a protected name:

      (i) for comparable products not compliant with the product specification of the protected name, or

      (ii) in so far as such use exploits the reputation of a geographical indication;

   (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as "style", "type", "method", "as produced

in", "imitation", "flavour", "like" or similar, including when those products are used as an ingredient;

(c) any other false or misleading indication as to the origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including when those products are used as an ingredient;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

2. Geographical indications listed in Annex [XX]-C shall not become generic in the territories of the Parties.

3. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be protected in the territory of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of that Party of origin. Such notification shall take place in accordance with procedures laid down in Article X.69 (Institutional Provisions).

4. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name of that person's predecessor in business, except where such name is used in such a manner to mislead the public.

Article X.34

Right of Use of Geographical Indications

[Purpose of the Article: free use of GIs by compliant users, avoidance of administrative burden]

1. A name protected under this Agreement may be used by any operator marketing a product which conforms to the corresponding specification.

2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

Article X.35

Relationship to Trademarks

1. The Parties shall, where a geographical indication is protected under this Sub-Section, refuse to register a trademark the use of which would contravene paragraph 1 of Article X.33 (Protection of Geographical Indications), provided an application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

Trademarks registered in breach of the first subparagraph shall be invalidated.

2. For geographical indications referred to in ArticleX.31 (Procedures), the date of submission of the application for protection referred to in paragraph 1 shall be the date of entry into force of this Agreement.

3. For geographical indications referred to in Article X.32 (Amendment of the List of Geographical Indications), the date of submission of the application for protection referred to in paragraph 1 shall be the date of the transmission of a request to the other Party to protect a geographical indication.

4. Without prejudice to paragraph 5 of the present Article, the Parties shall protect geographical indications also where a prior trademark exists. A prior trademark shall mean a trademark the use of which contravenes paragraph 1 of Article X.33 (Protection of Geographical Indications) which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

   Such trademark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties. In such cases, the use of the protected geographical indication shall be permitted as well as the use of the relevant trademarks.

5. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if, in light of a trademark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

Article X.36

Enforcement of Protection

[Purpose of the Article: own initiative protection by authorities]

The Parties shall enforce the protection provided for in Articles X.31 (Procedures) to X.35 (Relationship to Trademarks) by appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications. They shall also enforce such protection at the request of an interested party.

Article X.37

General Rules

1. This Agreement shall apply without prejudice to the rights and obligations of the Parties under the WTO Agreement.

2. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

3. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be protected even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. When a Party, in the context of bilateral negotiations with a third party, proposes to protect a geographical indication of that third party which is wholly or partially homonymous with a geographical indication of the other Party protected under this Sub-Section, it shall inform the other Party thereof and give it an opportunity to comment before the third party's geographical indication becomes protected.

5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the [joint working body defined by the Agreement] referred to in Article X.69 (Institutional Provisions).

6. The protection of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.

7. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

[Without prejudice to the placement of the relevant provisions relating to Article X.69 (Institutional Provisions), responsibilities as regards geographical indications of the joint working body defined by the Agreement are as follows:

X. The [joint working body defined by the Agreement] shall also see to the proper functioning of this Agreement and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

   (a) amending Section A of Annex [XX]-A as regards the references to the law applicable in the Parties;

   (b) amending Section B of Annex [XX]-A as regards the elements for registration and control of geographical indications;

   (c) amending Annex [XX]-B as regards the criteria to be included in the objection procedure; and

(d) modifying Annex [XX]-C as regards geographical indications;]

ANNEX [XX]-A

SECTION A

LEGISLATION OF THE PARTIES

Legislation of the Philippines

(a) XX

(b) XX

Legislation of the EU:

(a) Regulation (EU) No 1151/2012[5] of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs and its implementing Acts;

(b) Regulation (EU) No 1308/2013[6] of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Articles 92 to 111 on designations of origin and geographical indications, and its implementing Acts;

(c) Regulation (EC) No 110/2008[7] of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks, and its implementing Acts;

(d) Regulation (EU) No 251/2014[8] of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and its implementing Acts.

SECTION B

ELEMENTS FOR REGISTRATION AND CONTROL OF GEOGRAPHICAL INDICATIONS AS REFERRED TO IN PARAGRAPHS 1 AND 2 OF ARTICLE X.31 (PROCEDURES)

1. a register listing geographical indications protected in the territory;

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5 OJ L 343, 14.12.2012, p. 1.
6 OJ L 347, 20.12.2013, p.671.
7 OJ L 39, 13.2.2008, p. 16.
8 OJ L 84, 20.3.2014, p. 14.

2. an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

3. a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;

4. control provisions applying to production;

5. enforcement of the protection of registered names by appropriate administrative action by the public authorities;

6. legal provisions laying down that a registered name may be used by any operator marketing products conforming to the corresponding specification;

7. provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;

8. rules concerning relation between geographical indications and trademarks providing for a limited exception to the rights conferred under trademark law to the effect that the existence of a prior trademark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trademark's renown and the length of time it has been used, consumers would be misled by the registration and use of the geographical indication on products not covered by the trademark;

9. a right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided he complies with the product specifications;

10. an opposition procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ANNEX [XX]-B

CRITERIA TO BE INCLUDED IN THE OPPOSITION PROCEDURE AS REFERRED TO IN PARAGRAPHS 3 AND 4 OF ARTICLE X.31 (PROCEDURES)

1. List of name(s) with the corresponding transcription into Latin or [script of the third country concerned] characters;

2. The product type;

3. An invitation:

   (a) in the case of the European Union, to any natural or legal persons except those established or resident in the Philippines,

   (b) in the case of the Philippines, to any natural or legal persons except those established or resident in a Member State of the European Union,

   (c) having a legitimate interest, to submit objections to such protection by lodging a duly substantiated statement;

4. Statements of opposition must reach the European Commission or the Philippines within 2 months from the date of the publication of the information notice;

5. Statements of opposition shall be admissible only if they are received within the time limit set out above and if they show that the protection of the name proposed would:

   (a) conflict with the name of a plant variety, including a wine grape variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product;

   (b) be a homonymous name which misleads the consumer into believing that products come from another territory;

   (c) in the light of a trademark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;

   (d) jeopardise the existence of an entirely or partly identical name or of a trademark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice;

   (e) or if they can give details which indicate that the name, for which protection and registration is considered, is generic.

6. The criteria referred to above shall be evaluated in relation to the territory of (the European Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected) / (of the Philippines).

ANNEX [XX]-C

GEOGRAPHICAL INDICATIONS FOR PRODUCTS AS REFERRED TO IN PARAGRAPHS 3 AND 4 OF ARTICLE X.31 (PROCEDURES)

SECTION A

GEOGRAPHICAL INDICATIONS FOR PRODUCTS OF THE EUROPEAN UNION TO BE PROTECTED IN THE PHILIPPINES

- XXX
- XXX

SECTION B

GEOGRAPHICAL INDICATIONS FOR PRODUCTS OF THE PHILIPPINES TO BE PROTECTED IN THE EUROPEAN UNION

- XXX
- XXX

SUB-SECTION 5

Patents

Article X.38

International Agreements

Each Party shall comply with the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001, shall make all reasonable efforts to comply with the Patent Law Treaty, adopted in Geneva on 1 June 2000 and [*placeholder for European Patent Convention*].

Article X.39

[Placeholder for general patent provisions]

Article X.40

Patents and Public Health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 by the Ministerial Conference of the WTO (hereinafter referred to as "Doha Declaration"). In interpreting and implementing the rights and obligations under this Sub-Section, the Parties shall ensure consistency with the Doha Declaration.

2. The Parties shall contribute to the implementation and respect the decision of the WTO General Council of 30 August 2003 on implementation of paragraph 6 of the Doha Declaration as well as the Protocol of 6 December 2005 amending the TRIPS Agreement.

Article X.41

Extension of the Period of Protection Conferred by a Patent on Medicinal Products

1. The Parties recognise that medicinal products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. Each Party shall provide for a further period of protection for a medicinal product which is protected by a patent and which has been subject to an administrative authorisation

procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by a period of five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed […] years.

4. In the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information, the Parties shall provide for a further […] months extension of the period of protection referred to in paragraph 2.

Article X.42

Extension of the Period of Protection Conferred by a Patent on Plant Protection Products

1. Each Party shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties recognise that plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

3. Each Party shall provide for a further period of protection for a plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 2, reduced by [...].

4. Notwithstanding paragraph 3, the duration of the further period of protection may not exceed [...].

SUB-SECTION 6

Protection of Undisclosed Information

Article X.43

[Placeholder for the protection of trade secrets]

Article X.44

Protection of Data Submitted to Obtain an Authorisation to Put a Medicinal Product on the Market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal products on the market ("marketing authorisation") against disclosure to third parties, unless overriding public health interests provide otherwise.

2. Each Party shall ensure that for a period of […] from the first marketing authorisation in the Party concerned, the public body responsible for the granting of a marketing authorisation will not take into account confidential business information or the results of pre-clinical tests or clinical trials provided in the first marketing authorisation application and subsequently submitted by a person or entity, whether public or private, in support of another application to place a medicinal product on the market without the explicit consent of the person or entity who submitted such data, unless international agreements recognised by both Parties provide otherwise.

3. During a […] year period, starting from the date of grant of the first marketing authorisation in the Party concerned, a marketing authorisation granted for any subsequent application based on the results of pre-clinical tests or of clinical trials provided in the first marketing authorisation will not permit placing a medicinal product on the market, unless the subsequent applicant submits his own results of pre-clinical tests or of clinical trials (or results of pre-clinical tests or of clinical trials used with the consent of the party which had provided this information) meeting the same requirements as the first applicant. Products not complying with the requirements set out in this paragraph shall not be allowed on the market.

4. In addition, the […] year period referred to in paragraph 3 shall be extended to a maximum of […] years if, during the first […] years after obtaining the authorisation, the authorisation holder obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.

Article X.45

Protection of Data Submitted to Obtain Marketing Authorisation for Plant Protection Products

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

2. The test or study report should fulfil the following conditions:

   (a) be necessary for the authorisation or for an amendment of an authorisation in

order to allow the use on other crops; and

(b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. The period of data protection shall be at least […] years from the first authorisation granted by the concerned authority in that Party. In case of low risk plant protection products the period can be extended to […] years.

4. Those periods shall be extended by […] months for each extension of authorisation for minor uses[9] if the applications for such authorisations are made by the authorisation holder at the latest […] years after the date of the first authorisation. The total period of data protection may in no case exceed […] years. For low risk plant protection products the total period of data protection may in no case exceed […] years.

5. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be […] months.

SUB-SECTION 7

Plant Varieties

Article X.46

The Parties shall protect plant variety rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as lastly revised in Geneva on 19 March 1991 (1991 UPOV ACT), including the exceptions to the breeder's right as referred to in Article 15(2) of that Convention.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article X.47

General Provisions

1. The Parties affirm their commitments under the TRIPS Agreement and in particular of Part III thereof, and shall provide for the complementary measures, procedures and remedies under this Section, which are necessary to ensure the enforcement of

[9] Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.

intellectual property rights[10]. These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article X.48

Persons Entitled to Apply for the Application of the Measures, Procedures and Remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

(a) the holders of intellectual property rights in accordance with the provisions of the applicable law;

(b) all other persons authorised to use those intellectual property rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Civil and Administrative Enforcement

Article X.49

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party

[10] For the purposes of this Section the notion of "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; *sui generis* right of a database maker; rights of the creator of the topographies of a semiconductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected by each Party.

which has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

3. Each Party shall take the measures necessary, in cases of infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article X.50

Right of Information

1. Each Party shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer and/or any other person which is party to a litigation or a witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

   (a) "Any other person" in this paragraph means a person who was:

      (i) found in possession of the infringing goods on a commercial scale;

      (ii) found to be using the infringing services on a commercial scale;

      (iii) found to be providing on a commercial scale services used in infringing activities; or

      (iv) indicated by the person referred to in subparagraph (i) to (iii) as being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services.

   (b) Information shall, as appropriate, comprise:

      (i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or

(ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article shall apply without prejudice to other statutory provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

Article X.51

Provisional and Precautionary Measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right. For the purposes of this Article, "intermediaries" include internet service providers.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article X.52

Remedies

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. The competent judicial authorities of each Party shall have the authority to order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article X.53

Injunctions

Each Party shall ensure that, when a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities may issue against the infringer as well as against an intermediary whose services are being used by a third party to infringe an intellectual property right an injunction aimed at prohibiting the continuation of the infringement.

Article X.54

Alternative Measures

Each Party may provide that the judicial authorities, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article X.52 (Remedies) and/or Article X.53 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article X.52 (Remedies) and/or Article X.53 (Injunctions),if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article X.55

Damages

1. Each Party shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement. When the competent judicial authorities set the damages:

   (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or

   (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

Article X.56

Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

Article X.57

Publication of Judicial Decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the competent judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

Article X.58

Presumption of Authorship or Ownership

The Parties shall recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Section:

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;

(b) the provision under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Article X.59

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this Section.

Article X.60

Consistency with GATT and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Agreement, each Party shall ensure consistency with its obligations under the GATT and TRIPS Agreements and, in particular, with Article V of GATT Agreement, Article 41 and Section 4 of the Part III of TRIPS Agreement.

Article X.61

Voluntary Stakeholder Initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the Internet and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned including in the following ways:

(a) each Party shall endeavour to consensually convene stakeholders in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights with the aim of reducing infringement;

(b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

SECTION D

BORDER ENFORCEMENT

Article X.62

Border Enforcement Measures Related to Intellectual Property Rights

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting customs authorities to suspend the release of or detain goods suspected of infringing trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plan variety rights (hereinafter referred to as "suspect goods").

2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.

3. Customs authorities shall not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.

4. Customs authorities shall decide about granting or recording application within a reasonable period of time from the submission of the application.

5. Parties shall provide for such application/recordation to apply to multiple shipments.

6. With respect to goods under customs control, customs authorities may act upon their own initiative to suspend the release of or detain suspect goods.

7. Customs authorities shall use risk analysis to identify suspect goods.

8. Each Party shall have in place procedures allowing for the destruction of goods infringing intellectual property rights, without there being any need to prior administrative or judicial proceedings for the formal determination of the infringements, in particular where the persons concerned agree or do not oppose to the destruction. In case goods determined to be infringing are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in such a manner to avoid any harm to the right holder.

9. Each Party may have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.

10. There shall be no obligation to apply this Article to import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from

the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

11. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in paragraph 1.

12. The Parties agree to cooperation in respect of international trade in suspect goods and, in particular, to share information on such trade.

13. Without prejudice to other forms of cooperation, the Protocol [to complete] on Mutual Administrative Assistance in Customs Matters will be applicable with regard to breaches of legislation on intellectual property rights referred to in paragraph 1, for the enforcement of which the customs authorities are competent in accordance with this Article.

14. [Placeholder – Committee in charge of ensuring the proper functioning and implementation of this Article, in particular providing for the framework for organising cooperation].

SECTION E

[This Section should be placed in a Chapter dealing with e-commerce, but will be discussed by the IPR team]

LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

Article X.63

Use of Intermediaries' Services

The Parties recognise that the services of intermediaries may be used for activities infringing an intellectual property right and each Party shall provide for the following measures in respect of intermediary service providers.

Article X.64

Intermediary Service Providers: Mere Conduit

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

   (a) does not initiate the transmission;

(b) does not select the receiver of the transmission; and

(c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a competent authority, in accordance with each Party's legal system, of requiring the service provider to terminate or prevent an infringement.

Article X.65

Intermediary Service Providers: Caching

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

(a) the provider does not modify the information;

(b) the provider complies with conditions on access to the information;

(c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

(d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

(e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a competent authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a competent authority, in accordance with each Party's legal system, of requiring the service provider to terminate or prevent an infringement.

Article X.66

Intermediary Service Providers: Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

   (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

   (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a competent authority, in accordance with each Party's legal system, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

Article X.67

No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles X.64 (Intermediary Service Providers: Mere Conduit), X.65 (Intermediary Service Providers: Caching) and X.66 (Intermediary Service Providers: Hosting), to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.[11]

2. The Parties may establish obligations for information society service providers to promptly inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

SECTION F

FINAL PROVISIONS

[11] For greater clarity, this provision does not affect the possibility for a Party of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by domestic law, in order to detect and prevent certain types of illegal activities.

Article X.68

Cooperation and Transparency

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.

2. The Parties shall draw on the following modalities, among others, with respect to cooperation on intellectual property rights protection and enforcement matters. The areas of cooperation include the following activities, but are not limited to:

   (a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

   (b) The exchange of experience between the Parties on legislative progress;

   (c) The exchange of experience between the Parties on the enforcement of intellectual property rights;

   (d) Exchange of experiences between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;

   (e) Coordination to prevent exports of counterfeit goods, including with other countries;

   (f) Technical assistance, capacity building; exchange and training of personnel;

   (g) The protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, business circles and civil society;

   (h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;

   (i) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;

   (j) Regarding public-private collaboration engaging with SMEs, including at SME-focused events or gatherings, regarding protecting and enforcing intellectual property rights and reducing infringement;

   (k) Formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical

indications of the other Party protected pursuant to Sub-Section 4 (Geographical Indications).

4. The Parties shall, either directly or through the joint working body defined by the Agreement established in Article X.69 (Institutional Provisions), maintain contact on all matters related to the implementation and functioning of this Agreement.

Article X.69

Institutional Provisions

[Purpose of the Article: to establish the joint working body to monitor and implement the FTA with respect to the intellectual property chapter]

[Placeholder]

*This **document** is the European Union's (EU) proposal for a legal text on small and medium-sized enterprises in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

SMALL AND MEDIUM-SIZED ENTERPRISES

Article X.1

Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website or webpage containing information regarding this Agreement, including:

   (a) the text of this Agreement, including all annexes, tariff schedules, and product-specific rules of origin;

   (b) a summary of this Agreement; and

   (c) information designed for small and medium-sized enterprises (hereinafter referred to as "SME") that contains:

      (i) a description of the provisions in this Agreement that the Party in question considers to be relevant to SMEs; and

      (ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include links from the website or webpage provided for in paragraph 1 to:

   (a) the equivalent website or webpage of the other Party; and

   (b) the websites or webpages of its own government authorities and other appropriate entities that the Party considers would provide useful information to persons interested in trading, investing, or doing business in that Party.

3. With respect to subparagraph 2 (b), each Party shall include information related to the following, covering both the central level and lower level than Central [Philippines] or Union:

(a) customs regulations and procedures, as well as a description of the importation, exportation, and transit procedures informing of the practical steps needed to import and export, and for transit; and the forms, documents and other information required for importation into, exportation from, or transit through the customs territory of that Party;

(b) regulations and procedures concerning intellectual property rights, including geographical indications;

(c) a registry of technical regulations in force (including, where necessary, obligatory conformity assessment procedures); and of the titles and references of standards selected for reference in or used in connection with technical regulations, or proposed for such use; links to lists of conformity assessment bodies, in cases where third party conformity assessment is obligatory;

(d) sanitary and phytosanitary measures relating to importation and exportation;

(e) rules on public procurement, a database containing public procurement notices as well as other relevant information concerning public procurement opportunities;

(f) business registration procedures; and

(g) other information which the Party considers may be of assistance to SMEs.

4. Each Party shall include a link from the website or webpage provided for in paragraph 1 to a database that is electronically searchable by tariff nomenclature code and that includes the following information with respect to access to its market, covering both the central level and lower level than Central [Philippines] or Union (EU):

Tariff measures and tariff-related information

(a) rates of duty and quotas (including most-favoured nation (MFN), rates concerning non MFN countries and preferential rates and tariff rate quotas);

(b) tariff nomenclature related excise duties;

(c) tariff nomenclature related taxes (value added tax / sales tax);

(d) tariff nomenclature related customs or other fees, including other product specific fees, at the border;

(e) other tariff measures;

(f) rules of origin;

(g) duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;

(h) criteria used to determine the customs value of the good, in accordance with the WTO Customs Valuation Agreement;

(i) country of origin marking requirements, including placement and method of marking;

Tariff nomenclature related non-tariff measures

(j) tariff nomenclature information needed for import procedures; and

(k) tariff nomenclature related non-tariff measures or regulations.

5. Each Party shall regularly, or when requested by the other Party, review the information and links referred to in paragraphs 1 to 4 that it maintains on its website or webpage to ensure they are up-to-date and accurate.

6. Each Party shall ensure that information set out in this Article is presented in a manner that is easy to use for SMEs. Each Party shall make the information available in English.

7. No fee shall apply for access to the information provided pursuant to paragraphs 1 to 4 for any person in either Party.

Article X.2

SME Contact Points on SME Issues

1. The Parties hereby establish a SME Contact Point on SME Issues on each side.

2. The SME Contact Points on SME Issues shall:

(a) ensure that SME needs are taken into account in the implementation of the Agreement and consider ways to increase trade and investment opportunities for SMEs by strengthening cooperation on SME issues between the Parties;

(b) identify ways and exchange information for EU and Filipino SMEs to take advantage of new opportunities under the Agreement;

(c) monitor the implementation of the provisions on information sharing of Article X.1 (Information Sharing) to ensure that the information provided by the Parties is up-to-date and relevant for SMEs. The SME Contact Points on SME issues may recommend to the [joint body or committee defined by the Agreement] additional information that the Parties may include in their websites or webpages to be maintained in accordance with Article X.1 (Information Sharing);

(d) raise any other matter of interest to SMEs in connection with the implementation

of the Agreement, including:

(i) exchanging information to assist the Parties in monitoring and implementing the Agreement as it relates to SMEs;

(ii) participating, as appropriate, in the work of committees and working groups established by the Agreement, including the provisions on regulatory cooperation/regulatory coherence and non-tariff issues, and presenting to these committees and working groups specific issues of particular interest to SMEs in their areas, while avoiding duplication of work programs; and

(iii) identifying and reaching possible solutions that are mutually acceptable in order to improve the ability of SMEs to engage in trade and investment among the Parties;

[Note: appropriate provisions for contacts with the SME Contact Points to be placed in the cooperation and institutional provisions in other areas of the FTA]

(e) submit a regular report of its activities and make appropriate recommendations to the [joint body or committee defined by the Agreement] for its consideration;

(f) consider any other matter arising under the Agreement pertaining to SMEs as the Parties may agree.

3. SME Contact Points shall meet as necessary and shall carry out their work through the communication channels decided by the Parties, which may include electronic mail, videoconferencing, or other means.

4. SME Contact Points may seek to collaborate with experts and external organisations, as appropriate, in carrying out its programs and activities.

Article X.3

[Placeholder Title]

The Parties recognise that in addition to the provisions in this [Chapter], there are other provisions in the Agreement that seek to enhance cooperation between the Parties on SME issues or that otherwise may be of particular benefit to SMEs.

*This **document** is the European Union's (EU) proposal for a legal text on services and investment in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

TITLE ON INVESTMENT AND TRADE IN SERVICES

Contents

CHAPTER I

GENERAL PROVISIONS

Article 1.1

Objectives

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and for the liberalisation and a high level of protection of investment.

2. The Parties affirm the right to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity.

Article 1.2

Coverage

1. This Title applies to treatment accorded or measures adopted or maintained[1] by:

   (a) governments and authorities at all levels;

   (b) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels; and

   (c) any entity which is in fact acting on the instructions of or under the direction or the control of a Party with regard to the measure or treatment.

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

   Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits[2] accruing to any Party under the terms of a specific commitment in this Title and its Annexes.

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1 For greater certainty, "measure" or "treatment" includes failures to act.

2 The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 1.3

Definitions

1. For purposes of this Title:

(a) a "natural person of the EU" means a national of one of the Member States of the European Union according to its legislation[3] and a "natural person of […]" means a national of […] according to its legislation;

(b) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(c) a "juridical person of the EU" or a "juridical person of […]" means a juridical person set up in accordance with the laws of a Member State of the European Union or of […] and engaged in substantive business operations[4] in the territory of the EU or of the […], respectively;

Notwithstanding the paragraph (c) of this Article, shipping companies established outside the European Union or […] and controlled by nationals of a Member State of the European Union or of […], respectively, shall also be beneficiaries of the provisions of this Title, with the exception of Chapter II (Investment) Section B (Investment Protection) and of Section C (Resolution of Investment Disputes and Investment Court System) if their vessels are registered in accordance with their respective legislation, in that Member State or in […] and fly the flag of a Member State or of […];

(d) an "enterprise" means a juridical person, branch or representative office set up through establishment, as defined under this Article;

(e) "establishment" means the setting up, including the acquisition[5] of, an enterprise in […] or in the EU respectively;

(f) "economic activities" include services and activities of an industrial, commercial or professional character and activities of craftsmen but does not include activities performed or services supplied in the exercise of governmental authority;

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3 The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

4 In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

5 The term "acquisition" shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(g) "operation" includes the conduct, management, maintenance, use, enjoyment, sale or other disposal of an investment by an investor of one Party in the territory of the other Party ;

(h) "service" includes any service in any sector but not services supplied in the exercise of governmental authority;

(i) "services supplied and activities performed in the exercise of governmental authority" means services supplied or activities performed neither on a commercial basis nor in competition with one or more economic operators;

(j) "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party

(ii) in the territory of a Party to the service consumer of the other Party;

(k) a "service supplier" of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;

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

(m) an "investor" means a natural person or a juridical person of a Party that seeks to make, is making or has already made an investment in the territory of the other Party.

(n) "covered investment" means an investment which is owned, directly or indirectly, or controlled, directly or indirectly, by investors of one Party in the territory of the other Party made in accordance with applicable laws, whether made before or after the entry into force of this Agreement.

(o) "investment" means every kind of asset, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, or a certain duration. Forms that an investment may take include:

(i) an enterprise, shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;

(ii) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;

(iii) other financial assets including derivatives, futures and options;

(iv) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(v) claims to money, or to other assets or to any contractual performance having an economic value;

(vi) intellectual property rights, as defined in Chapter [YY (on Intellectual Property)] of this Agreement, technical processes, know-how and goodwill;

(vii) licenses, including intellectual property licences, authorizations, permits, and similar rights conferred pursuant to domestic law, including any concessions to search for, cultivate, extract or exploit natural resources;

(viii) other tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens, and pledges.

For greater certainty:

(a) "claims to money" does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or an enterprise in the territory of a Party to a natural person or an enterprise in the territory of the other Party, domestic financing of such contracts, or any related order, judgment, or arbitral award; and

(b) an order or judgment entered in a judicial or administrative action shall not constitute in itself an investment.

Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments;

(p) "freely convertible currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

(q) "returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income.

(r) "aircraft repair and maintenance services during which an aircraft is withdrawn from service" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(s) "selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(t) "computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(u) "ground handling services" mean the supply at an airport of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems

(v) "airport operation services" mean the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.

CHAPTER II

INVESTMENT

SECTION A

LIBERALISATION OF INVESTMENTS

Article 2.1

Scope

1. This Section applies to treatment accorded or measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an investment in all economic activities by an investor of the other Party in its territory[6].

2. The provisions of this Section shall not apply to:

   (a) audio-visual services;

   (b) national maritime cabotage[7]; and

   (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

      (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

      (ii) the selling and marketing of air transport services;

      (iii) computer reservation system (CRS) services;

      (iv) groundhandling services;

      (v) airport operation services;

3. Government procurement shall be dealt with by Chapter [YY (on Public Procurement)]. Nothing in this Section shall be construed to limit the obligations of the Parties under Chapter [YY (on Public Procurement)] or to impose any additional obligation with respect to government procurement.

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6 For greater certainty, territory shall include exclusive economic zone and continental shelf, as provided in the United Nations Convention on the Law of the Sea (UNCLOS).

7 Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in […] or a Member State of the European Union and another port or point located in […] or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in […] or a Member State of the European Union.

4. Without prejudice to Article 2.6 (Performance Requirements) of this Chapter, subsidies shall be dealt with by Chapter [YY (on Competition and Subsidies)] and the provisions of this Section shall not apply to subsidies granted by the Parties.

Article 2.2

Market Access

1. With respect to market access through establishment or operation in its territory, each Party shall accord to investors of the other Party and to enterprises that are covered investments treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the schedule of specific commitments contained in Annexes […] (lists of commitments on liberalisation of investments).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedule of specific commitments contained in Annexes […] (lists of commitments on liberalisation of investments) are defined as:

   (a) limitations on the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive rights or other requirement relating to establishment such as economic needs tests;

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

   (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[8]

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

   (e) measures which restrict or require specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity.

   (f) limitations on the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

Article 2.3

[8] Subparagraphs 2 (a), (b), and (c) do not cover measures taken in order to limit the production of an agricultural or fishing product.

National Treatment

1. In the sectors inscribed in the schedule of specific commitments in Annexes […] (lists of commitments on liberalisation of investments) and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to enterprises that are covered investments, as regards their establishment in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their enterprises.

2. Each Party shall accord to investors of the other Party and to covered investments, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments.

3. Notwithstanding paragraph 2, a Party may adopt or maintain any measure with respect to the operation of an enterprise that is a covered investment that is not inconsistent with its commitments inscribed in Annexes […] (lists of commitments on liberalisation of investments of both Parties), where such measure is:

   (a) a measure that is adopted on or before the entry into force of this Agreement;

   (b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

   (c) a measure not falling within subparagraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage to, investments made in the territory of the Party before the entry into force of such measure.

Article 2.4

Most Favoured Nation Treatment

1. [The EU reserves its right to propose text extending most favoured nation treatment to the establishment stage.]

2. Each Party shall accord to investors of the other Party and to covered investments, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any non-Party.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:

   (a) treatment granted as part of a process of economic integration, which includes commitments to abolish substantially all barriers to investment among the parties to such a process, together with the approximation of legislation of the parties on a broad range of matters within the purview of this Agreement.

(b) [reference to double taxation agreements in case not covered by horizontal provisions in the Agreement]

(c) measures providing for the recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.

4. For greater certainty the "treatment" referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment treaties and other trade agreements. The substantive provisions in other international investment or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article absent measures applied pursuant to such provisions.

Article 2.5

Schedule of Specific Commitments

The sectors liberalised by each of the Parties pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 2.2 (Market Access), 2.3 (National Treatment), 2.4 (Most Favoured Nation Treatment), and 2.6 (Performance Requirements) are set out in the schedules of commitments included in Annexes […] (lists of commitments on liberalisation of investments).

Article 2.6

Performance Requirements

1. In the sectors set out in its schedule of specific commitments in Annexes […] (lists of commitments on liberalisation of investments of both Parties) and subject to any conditions and qualifications set out therein, a Party shall not impose, or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment of all enterprises or the operation of all investments in its territory to:

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

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

(c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;

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

(e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) provide access to or transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;

(g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market;

(h) locate the headquarters of that investor for a specific region or the world market in its territory;

(i) hire a given number or percentage of its nationals;

(j) achieve a given level or value of research and development in its territory;

(k) restrict the exportation or sale for export.

[NOTE: The EU reserves the right to propose additional performance requirements to be included in the list.]

2. In the sectors set out in its schedule of specific commitments in Annexes […] (lists of commitments on liberalisation of investments of both Parties) and subject to any conditions and qualifications set out therein, a Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment of all enterprises or the operation of all investments in its territory, on compliance with any of the following requirements:

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

(b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

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

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory, in compliance with a requirement to locate production, provide a service, train or employ

workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Subparagraph 1 (f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a restriction of competition.

5. The provisions of:

   (a) Subparagraphs 1 (a), (b) and (c), and 2 (a) and (b) do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programs;

   (b) This Article does not apply to procurement by a procuring entity for goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods and services for commercial sale.

   (c) For greater certainty, subparagraphs 2 (a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

6. A Party shall neither impose nor maintain any measure inconsistently with its obligations under the WTO Agreement even if such measure has been scheduled by that Party in Annex […] (lists of commitments on liberalisation of investments of both Parties).

Article 2.7

Review

The Parties shall review this Section and Annexes (Lists of commitments on liberalisation of investments) [X] years after the entry into force of this Agreement and at regular intervals thereafter, with a view to further deepening liberalisation and eliminating remaining restrictions and ensuring an overall balance of rights and obligations. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Schedules of Specific Commitments.

SECTION B

INVESTMENT PROTECTION

Article 2.8

Scope

This Section applies to:

(a) covered investments;

(b) investors of a Party in respect of a covered investment as regards any treatment accorded or measure adopted or maintained by a Party and affecting the operation of such investment.

Article 2.9

Investment and Regulatory Measures

1. The Parties affirm the right to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity.

2. For greater certainty, the provisions of this Section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.

3. For greater certainty and subject to paragraph 4, a Party's decision not to issue, renew or maintain a subsidy

   (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or

   (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,

   shall not constitute a breach of the provisions of this Section.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy[9] or requesting its reimbursement, where such action has been ordered by one of its competent authorities listed in Annex III, or as requiring that Party to compensate the investor therefor.

[9] In the case of the EU, "subsidy" includes "state aid" as defined in EU law.

Article 2.10

Treatment of Investors and of Covered Investments

1. Each Party shall accord in its territory to covered investments of the other Party and investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 5.

2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 through treatment or measures that constitute:

   (a) denial of justice in criminal, civil or administrative proceedings; or

   (b) fundamental breach of due process, including a fundamental breach of transparency and obstacles to effective access to justice, in judicial and administrative proceedings; or

   (c) arbitrariness; or

   (d) bias or discrimination on manifestly wrongful grounds, such as origin, ownership structure, gender, race or religious belief; or

   (e) harassment, coercion, abuse of power, corruptive practices or bad faith conduct; or

   (f) a breach of legitimate expectations of investors arising from a Party's specific representations to an investor to induce a covered investment, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated; or

   (g) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.

3. The Parties shall, upon request of a Party, review the content of the obligation to provide fair and equitable treatment. The […] Committee (reference to Article on Services and Investment Committee) may develop recommendations in this regard and submit them to the […] Committee (reference to Article on Trade Committee). The […] Committee (reference to Article on Trade Committee) shall consider whether to recommend that the Agreement is amended, in accordance with Article […] (relevant procedures for the amendment of the Agreement).

4. For greater certainty, "full protection and security" refers to the Party's obligations relating to physical security of investors and covered investments.

5. For greater certainty, a breach of another provision of this Agreement, or of any other international agreement, does not constitute a breach of this Article.

Article 2.11

Compensation for Losses

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by that Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that Party to its own investors or to the investors of any non-Party, whichever is more favourable to the investor.

2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded prompt, adequate and effective restitution or compensation by the other Party, if these losses result from:

   (a) requisitioning of their covered investment or a part thereof by the latter's armed forces or authorities; or

   (b) destruction of their covered investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation;

   The amount of such compensation shall be determined in accordance with the provisions of paragraph 2 of Article 2.12 (Expropriation), from the date of requisitioning or destruction until the date of actual payment.

Article 2.12

Expropriation

1. Neither Party shall nationalise or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except:

   (a) for a public purpose;

   (b) under due process of law;

   (c) in a non-discriminatory manner; and

   (d) against payment of prompt, adequate and effective compensation.

   For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.

4. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ("TRIPS Agreement").

Article 2.13

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, without restriction or delay and at the market rate of exchange prevailing on the date of transfer with regard to the currency to be transferred. Such transfers include:

   (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

   (b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

   (c) interest, royalty payments, management fees, and technical assistance and other fees;

   (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

   (e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;

   (f) payments made pursuant to Articles 2.11 (Compensation for Losses) and 2.12 (Expropriation);

   (g) payments of damages pursuant to an award issued by a tribunal under Section C (Resolution of Investment Disputes and Investment Court System).

2. Neither Party may require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

3. Notwithstanding paragraphs 1 and 2, this Article shall not be construed as preventing a Party from applying in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on trade and investment, its laws relating to:

   (a) bankruptcy, insolvency, bank recovery and resolution, or the protection of the rights of creditors, and the prudential supervision of financial institutions;

   (b) issuing, trading, or dealing in financial instruments;

   (c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

   (d) criminal or penal offenses, deceptive or fraudulent practices;

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

   (f) social security, public retirement or compulsory savings schemes.

Article 2.14

Observance of Written Commitments

Where a Party either itself or through any entity mentioned in Article 1.2 (Coverage) has entered into any written commitment with investors of the other Party or with their covered investments, that Party shall not, either itself or through any such entity breach the said commitment through the exercise of governmental authority.

Article 2.15

Subrogation

If a Party, or an agency thereof, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of a covered investment made by one of its investors in the territory of the other Party, the other Party shall recognize that the Party or its agency shall be entitled in all circumstances to the same rights under this Section as those of the investor in respect of the covered investment. Such rights may be exercised by the Party or an agency thereof, or by the investor if the Party or an agency thereof so authorises. The investor may not pursue these rights to the extent of the subrogation.

Article 2.16

Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

(a) the investors of a non-Party owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to the non-Party that:

(i) are related to the maintenance of international peace and security; and

(ii) prohibit transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 2.17

Termination

In the event that this Agreement is terminated pursuant to Article [X.X] (Duration), this Section and Section C (Resolution of Investment Disputes and Investment Court System) shall continue to be effective for a further period of 20 years from the date of termination, with respect to investments made before the date of termination of the present Agreement. This Article shall not apply in the case of termination of provisional application of this Agreement and this Agreement does not enter into force.

Article 2.18

Relationship with Other Agreements

1. Upon the entry into force of this Agreement, the agreements between Member States of the Union and the Philippines listed in Annex YY (Agreements between the Member States of the Union and the Philippines) including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Agreement.

2. In the event of the provisional application in accordance with paragraph 4 of Article [X.X] (Entry into Force), including this Chapter, the application of the agreements listed in Annex [YY] (Agreements between the Member States of the Union and the Philippines), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event that the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex [YY] (Agreements between the Member States of the Union and the Philippines) shall have effect.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex Y (Agreements between the Member States of the Union and

the Philippines), in accordance with the rules and procedures established in that agreement, provided that:

(a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, prior to the date of entry into force of this Agreement; and

(b) no more than three years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, from the date of entry into force of this Agreement until the date of submission of the claim.

4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:

(a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of this Agreement; and

(b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.

5. For the purposes of this Article, the definition of "entry into force of this Agreement" provided for in paragraph 7 of Article [X.X] (Entry into Force) shall not apply.

ANNEX I

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:

   (a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

   (b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

   (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

   (b) the duration of the measure or series of measures by a Party;

   (c) the character of the measure or series of measures, notably their object and context.

3. For greater certainty, non-discriminatory measures by a Party that are proportionate in light of the above-mentioned factors designed and applied to protect legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity do not constitute indirect expropriations.

ANNEX II

PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation under Section B (Investment Protection) may be submitted to, or if already submitted, be pursued under Section C (Resolution of Investment Disputes and Investment Court System) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission.

2. Notwithstanding Article 2.24 (Submission of a Claim) of Section C (Resolution of Investment Disputes and Investment Court System), and subject to paragraph 1 of this Annex, an investor may not submit a claim under Section C (Resolution of Investment Disputes and Investment Court System) that a restructuring of debt of a Party breaches Articles 2.3 (National Treatment) or 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments)[10] or an obligation under Section B (Investment Protection), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 2.22 (Consultations) of Sub-Section 1 (Scope and Definitions) of Section C (Resolution of Investment Disputes and Investment Court System).

3. For the purposes of this Annex:

   (a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 66% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process.

   (b) "governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.

4. For greater certainty, "debt of a Party" includes, in the case of the European Union, debt of a government of a Member State at the central, regional or local level.

[10] For greater certainty, a breach of Article 2.3 (National Treatment) or Article 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

ANNEX III

COMPETENT AUTHORITIES MENTIONED IN ARTICLE 2.9 PARAGRAPH 4 OF SECTION B (INVESTMENT PROTECTION)

In the case of the EU, the competent authorities entitled to order the actions mentioned in Article 2.9 (Investment and Regulatory Measures) paragraph 4 are the European Commission or a court or tribunal of a Member State when applying EU law on state aid.

ANNEX []

AGREEMENTS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND THE PHILIPPINES

SECTION C

RESOLUTION OF INVESTMENT DISPUTES AND INVESTMENT COURT SYSTEM

SUB-SECTION 1

Scope and Definitions

Article 2.19

Scope and Definitions

1. This Section shall apply to a dispute between, on the one hand, a claimant of one Party and, on the other hand, the other Party concerning treatment alleged to breach Article 2.3 (2) (National Treatment) or Article 2.4 (2) (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) or Section B (Investment Protection), which breach allegedly causes loss or damage to the claimant or its locally established company.

2. A claim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex X [Public debt].

3. For the purposes of this Section:

   (a) "proceeding", unless otherwise specified, means a proceeding before the Tribunal or Appeal Tribunal under this Section;

   (b) "disputing parties" means the claimant and the respondent;

   (c) "claimant" means an investor of a Party, as defined in Article 1.3 (Definitions) of Chapter I (General Provisions), which seeks to submit or has submitted a claim pursuant to this Section, either

      (i) acting on its own behalf; or

      (ii) acting on behalf of a locally established company which it owns or controls. The locally established company shall be treated as a national of another Contracting State for the purposes of Article 25 (2) (b) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID-Convention).

   (d) "non-disputing Party" means either […], when the respondent is the European Union or a Member State of the European Union; or the European Union, when […] is the respondent.

   (e) "respondent" means either […]; or in the case of the European Union, either the European Union or the Member State of the European Union concerned as

determined pursuant to Article 2.23 (Request for Determination of the Respondent).

(f) "locally established company" means a juridical person established in the territory of one Party, and owned or controlled by an investor of the other Party.[11]

(g) "UNCITRAL Transparency Rules" means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

(h) "third Party funding" means any funding provided by a natural or legal person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant.

SUB-SECTION 2

Alternative Dispute Resolution and Consultations

Article 2.20

Amicable Resolution

1. Any dispute should, as far as possible, be settled amicably through negotiations or mediation and, where possible, before the submission of a request for consultations pursuant to Article 2.22 (Consultations). Such settlement may be agreed at any time, including after proceedings under this Section have been commenced.

2. A mutually agreed solution between the disputing parties shall be notified to the non-disputing Party within 15 days of the mutually agreed solution being agreed. Each disputing party shall abide by and comply with any mutually agreed solution reached in accordance with this article or with Article 2.21 (Mediation). The [..] Committee shall keep under surveillance the implementation of such mutually agreed solutions and the Party to the mutually agreed solution shall regularly report to the [..] Committee on the implementation of such solution.

Article 2.21

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

[11] A juridical person is: (i) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party; (ii) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.

3. Recourse to mediation shall be governed by the rules set out in Annex I (Mediation Mechanism for Investor-to-State Disputes). Any time limit mentioned in Annex I (Mediation Mechanism for Investor-to-State Disputes) may be modified by agreement between the disputing parties.

4. The […] Committee shall, upon the entry into force of this Agreement, establish a list of six individuals, of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.

5. The mediator shall be appointed by agreement of the disputing parties. The disputing parties may jointly request the President of the Tribunal to appoint a mediator from the list established pursuant to this Article, or, in the absence of a list, from individuals proposed by either Party.

6. Once the disputing parties agree to have recourse to mediation, the time-limits set out in Articles 2.22 (3) (Consultations), 2.22 (5) (Consultations), 2.46 (6) (Provisional Award) and 2.47 (3) (Appeal Procedure) shall be extended by the amount of time from the date on which it was agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation, by way of written notice to the mediator and the other disputing party. At the request of both parties, the Tribunal or the Appeal Tribunal shall stay the proceedings.

Article 2.22

Consultations

1. Where a dispute cannot be resolved as provided for under Article 2.20 (Amicable Resolution), a claimant of a Party alleging a breach of the provisions referred to in Article 2.19 (1) (Scope and Definitions) may submit a request for consultations to the other Party.

2. The request shall contain the following information:

   (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company;

   (b) the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged to have been breached;

   (c) the legal and factual basis for the claim, including the treatment alleged to be inconsistent with the provisions in Article 2.19 (1) (Scope and Definitions);

   (d) the relief sought and the estimated amount of damages claimed;

(e) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment and, where it acts on behalf of a locally established company, that it owns or controls the locally established company.

Where a request for consultations is submitted by more than one claimant or on behalf of more than one locally established company, the information in (a) and (e) shall be submitted for each claimant or each locally established company, as the case may be.

3. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations.

4. Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) […] where the consultations concern treatment afforded by […];

(b) Brussels where the consultations concern treatment afforded by the European Union; or

(c) the capital of the Member State of the European Union concerned, where the consultations concern treatment afforded exclusively by that Member State.

Consultations may also take place by videoconference or other means, particularly where a small or medium sized enterprise is involved.

5. The request for consultations must be submitted:

(a) within three years of the date on which the claimant or, as applicable, the locally established company first acquired, or should have first acquired, knowledge of the treatment alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby; or

(b) within two years of the date on which the claimant or, as applicable, the locally established company ceases to pursue claims or proceedings before a tribunal or court under the domestic law of a Party; and, in any event, no later than 10 years after the date on which the claimant or, as applicable, its locally established company, first acquired, or should have first acquired knowledge, of the treatment alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby.

6. In the event that the claimant has not submitted a claim pursuant to Article 2.24 (Submission of a Claim) within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations and, where applicable, the notice requesting a determination of the respondent pursuant to Article 2.23 (Request for Determination of the Respondent) and may not submit a claim under this Section. This period may be extended by agreement between the parties involved in the consultations.

7. The time periods in paragraphs 5 and 6 shall not render a claim inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim is due to the claimant's inability to act as a result of actions taken by the other Party, provided that the claimant acts as soon as reasonably possible after it is able to act.

8. In the event that the request for consultations concerns an alleged breach of the Agreement by the European Union, or by a Member State of the European Union, it shall be sent to the European Union. Where treatment afforded by a Member State of the European Union is identified, it shall also be sent to the Member State concerned.

SUB-SECTION 3

Submission of a Claim and Conditions Precedent

Article 2.23

Request for Determination of the Respondent

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of the Agreement by the European Union or a Member State of the European Union and the claimant intends to initiate proceedings pursuant to Article 2.24 (Submission of a Claim), the claimant shall deliver a notice to the European Union requesting a determination of the respondent.

2. The notice shall identify the treatment in respect of which the claimant intends to initiate proceedings. Where treatment of a Member State of the European Union is identified, such notice shall also be sent to the Member State concerned.

3. The European Union shall, after having made a determination, inform the claimant within 60 days of the receipt of the notice referred to in paragraph 1 as to whether the European Union or a Member State of the European Union shall be the respondent.

4. If the claimant submits a claim pursuant to Article 2.24 (Submission of a Claim), it shall do so on the basis of such determination.

5. Where either the European Union or a Member State of the European Union acts as respondent following a determination made pursuant to paragraph 3, neither the European Union nor the Member State concerned may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise assert that the claim or award is unfounded or invalid on the ground that the proper respondent should be or should have been the European Union rather than the Member State or vice versa.

6. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3.

7. Nothing in this Agreement or the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

Article 2.24

Submission of a Claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and, where applicable, at least three months have elapsed from the submission of the notice requesting a determination of the respondent pursuant to Article 2.23 (Request for Determination of the Respondent), the claimant, provided that it satisfies the requirements set out in this Article and in Article 2.25 (Consent), may submit a claim to the Tribunal established pursuant to Article 2.27 (Tribunal of First Instance ("Tribunal")).

2. A claim may be submitted to the Tribunal under one of the following sets of rules on dispute settlement:

   (a) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID);

   (b) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID) in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, where the conditions for proceedings pursuant to paragraph (a) do not apply;

   (c) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

   (d) any other rules agreed by the disputing parties at the request of the claimant. In the event that the claimant proposes a specific set of dispute settlement rules and if, within 30 days of receipt of the proposal, the disputing parties have not agreed in writing on such rules, or the respondent has not replied to the claimant, the claimant may submit a claim under one of the sets of rules provided for in paragraphs (a), (b) or (c);

3. The rules on dispute settlement referred to in paragraph 2 shall apply subject to the rules set out in this Chapter, as supplemented by any rules adopted by the [...] Committee, by the Tribunal or by the Appeal Tribunal.

4. All the claims identified by the claimant in the submission of its claim pursuant to this Article must be based on treatment identified in its request for consultations pursuant to Article 2.22 (2) (c) (Consultations).

5. Claims submitted in the name of a class composed of a number of unidentified claimants, or submitted by a representative intending to conduct the proceedings in the

interests of a number of identified or unidentified claimants that delegate all decisions relating to the proceedings on their behalf, shall not be admissible.

6. For greater certainty, a claimant may not submit a claim under this Section if its investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

Article 2.25

Consent

1. The respondent consents to the submission of a claim under this Section.

2. The consent under paragraph 1 and the submission of a claim under this Section shall be deemed to satisfy the requirements of:

   (a) Article 25 of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the disputing parties; and,

   (b) Article II of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards for an "agreement in writing".

3. The claimant is deemed to give consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 2.24 (Submission of a Claim).

4. For greater certainty, the consent provided pursuant to this Article requires that:

   (a) the claimant refrains from enforcing an award rendered pursuant to this Section before such award has become final pursuant to Articles 2.46 (6) (Provisional Award) or 2.46 (7) (Provisional Award); and

   (b) the respondent refrains from seeking to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this Section.

Article 2.26

Third Party Funding

1. Where there is third party funding, the disputing party benefiting from it shall notify to the other disputing party and to the division of the Tribunal, or where the division of the Tribunal is not established, to the President of the Tribunal, the name and address of the third party funder.

2. Such notification shall be made at the time of submission of a claim, or, where the financing agreement is concluded or the donation or grant is made after the submission

of a claim, without delay as soon as the Agreement is concluded or the donation or grant is made.

SUB-SECTION 4

Investment Court System

Article 2.27

Tribunal of First Instance ("Tribunal")

1. A Tribunal of First Instance ("Tribunal") is hereby established to hear claims submitted pursuant to Article 2.24 (Submission of a Claim).

2. The […] Committee shall, upon the entry into force of this Agreement, appoint fifteen Judges to the Tribunal. Five of the Judges shall be nationals of a Member State of the European Union, five shall be nationals of […] and five shall be nationals of third countries.

3. The […] Committee may decide to increase or to decrease the number of the Judges by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Judges shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. The Judges appointed pursuant to this Section shall be appointed for a six-year term, renewable once. However, the terms of seven of the fifteen persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to nine years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

6. The Tribunal shall hear cases in divisions consisting of three Judges, of whom one shall be a national of a Member State of the European Union, one a national of […] and one a national of a third country. The division shall be chaired by the Judge who is a national of a third country.

7. Within 90 days of the submission of a claim pursuant to Article 2.24 (Submission of a Claim), the President of the Tribunal shall appoint the Judges composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Judges to serve.

8. The President and Vice-President of the Tribunal shall be responsible for organisational issues and will be appointed for a two-year term and shall be drawn by lot from among the Judges who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the […] Committee. The Vice-President shall replace the President when the President is unavailable.

9. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Judge who is a national of a third country, to be selected by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 2.24 (Submission of a Claim).

10. The Tribunal shall draw up its own working procedures.

11. The Judges shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities under this Agreement.

12. In order to ensure their availability, the Judges shall be paid a monthly retainer fee to be fixed by decision of the […] Committee. [Note: the retainer fee suggested by the EU would be around 1/3rd of the retainer fee for WTO Appellate Body members (i.e. around € 2,000 per month)]. The President of the Tribunal and, where applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 2.28 (12) (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

13. The retainer fee shall be paid equally by both Parties into an account managed by the Secretariat of [ICSID]. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.

14. Unless the […] Committee adopts a decision pursuant to paragraph 15, the amount of the other fees and expenses of the Judges on a division of the Tribunal shall be those determined pursuant to Regulation 14 (1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 2.46 (4) (Provisional Award).

15. Upon a decision by the […] Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In such an event, the Judges shall serve on a full-time basis and the […] Committee shall fix their remuneration and related organisational matters. In that event, the Judges shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.

16. The Secretariat of [ICSID] shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be met by the Parties to the Agreement equally.

Article 2.28

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals from the awards issued by the Tribunal.

2. The Appeal Tribunal shall be composed of six Members, of whom two shall be nationals of a Member State of the European Union, two shall be nationals of […] and two shall be nationals of third countries.

3. The […] Committee, shall, upon the entry into force of this Agreement, appoint the members of the Appeal Tribunal. For this purpose, each Party shall propose three candidates, two of which may be nationals of that Party and one shall be a non-national, for the […] Committee to thereafter jointly appoint the Members.

4. The Committee may agree to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 3.

5. The Appeal Tribunal Members shall be appointed for a six-year term, renewable once. However, the terms of three of the six persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to nine years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

6. The Appeal Tribunal shall have a President and Vice-President responsible for organisational issues, who shall be selected by lot for a two-year term and shall be selected from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the […] Committee. The Vice-President shall replace the President when the President is unavailable.

7. The Members of the Appeal Tribunal shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

8. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of […] and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

9. The composition of the division hearing each appeal shall be established in each case by the President of the Appeal Tribunal on a rotation basis, ensuring that the composition

of each division is random and unpredictable, while giving equal opportunity to all Members to serve.

10. The Appeal Tribunal shall draw up its own working procedures.

11. All persons serving on the Appeal Tribunal shall be available at all times and on short notice and shall stay abreast of other dispute settlement activities under this agreement.

12. The Members of the Appeal Tribunal shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the […] Committee. [Note: the retainer and daily fee suggested by the EU would be around the same as for WTO Appeal Tribunal members (i.e. a retainer fee of around € 7,000 per month)]. The President of the Appeal Tribunal and, where applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.

13. The remuneration of the Members shall be paid equally by both Parties into an account managed by the Secretariat of [ICSID]. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.

14. Upon a decision by the […] Committee, the retainer fee and the fees for days worked may be permanently transformed into a regular salary. In such an event, the Members of the Appeal Tribunal shall serve on a full-time basis and the […] Committee shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.

15. The Secretariat of [ICSID] shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be met by the Parties to the Agreement equally.

Article 2.29

Ethics

1. The Judges of the Tribunal and the Members of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government.[12] They shall not take instructions from any government or organisation with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with Annex II (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment protection dispute under this or any other agreement or domestic law.

[12] For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has a family relationship with a government official, does not in itself render that person ineligible.

2. If a disputing party considers that a Judge or a Member does not meet the requirements set out in paragraph 1, it shall send a notice of challenge to the appointment to the President of the Tribunal or to the President of the Appeal Tribunal, respectively. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

3. If, within 15 days from the date of the notice of challenge, the challenged Judge or Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, respectively, shall, after hearing the disputing parties and after providing the Judge or the Member an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and forthwith notify the disputing parties and other Judges or Members of the division.

4. Challenges against the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and vice-versa.

5. Upon a reasoned recommendation from the President of the Appeal Tribunal, the Parties, by decision of the […] Committee, may decide to remove a Judge from the Tribunal or a Member from the Appeal Tribunal where his behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal then the President of the Tribunal of First Instance shall submit the reasoned recommendation. Articles 2.27 (2) (Tribunal of First Instance ("Tribunal")) and 2.28 (3) (Appeal Tribunal) shall apply mutatis mutandis for filling vacancies that may arise pursuant to this paragraph.

Article 2.30

Multilateral Dispute Settlement Mechanisms

Upon the entry into force between the Parties of an international agreement providing for a multilateral investment tribunal and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Section shall cease to apply. The […] Committee may adopt a decision specifying any necessary transitional arrangements.

SUB-SECTION 5

Conduct of Proceedings

Article 2.31

Applicable Law and Rules of Interpretation

1. The Tribunal shall determine whether the treatment subject to the claim is inconsistent with any of the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged by the claimant.

2. In making its determination, the Tribunal shall apply the provisions of this Agreement and other rules of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.

3. For greater certainty, pursuant to paragraph 1, the domestic law of the Parties shall not be part of the applicable law. Where the Tribunal is required to ascertain the meaning of a provision of the domestic law of one of the Parties as a matter of fact, it shall follow the prevailing interpretation of that provision made by the courts or authorities of that Party.

4. For greater certainty, the meaning given to the relevant domestic law by the Tribunal shall not be binding upon the courts or the authorities of either Party. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party.

5. Where serious concerns arise as regards matters of interpretation relating to [the Investment Protection[13] or the Resolution of Investment Disputes and Investment Court System Section of this Agreement], the […] Committee may adopt decisions interpreting those provisions. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The […] Committee may decide that an interpretation shall have binding effect from a specific date.

Article 2.32

Other Claims

1. The Tribunal shall dismiss a claim by a claimant who has submitted a claim to the Tribunal or to any other domestic or international court or tribunal concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) unless the claimant withdraws such pending claim.
This paragraph shall not apply where the claimant submits a claim to a domestic court or tribunal seeking interim injunctive or declaratory relief.

2. Before submitting a claim the claimant shall provide:

   (a) evidence that it has withdrawn any pending claim or proceedings before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions);

[13] As referred to in Article 2.19 (Scope and Definitions).

(b) a declaration that it will not initiate any claim or proceeding before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions).

3. For the purposes of this Article, the term "claimant" includes the investor and, where applicable, the locally established company.

In addition, for the purposes of paragraphs 1 and 2 (a), the term "claimant" also includes:

(a) where the claim is submitted by an investor acting on its own behalf, all persons who, directly or indirectly, have an ownership interest in or are controlled by the investor; or

(b) where the claim is submitted by an investor acting on behalf of a locally established company, all persons who, directly or indirectly, have an ownership interest in or are controlled by the locally established company,
and claim to have suffered the same loss or damage as the investor or locally established company.[14]

4. The declaration provided pursuant to paragraph 2 (b) shall cease to apply where the claim is rejected on the basis of a failure to meet the nationality requirements to bring an action under this Agreement.

5. Where claims are brought both pursuant to this Section and [Section XX (State to State dispute settlement)] or another international agreement concerning the same treatment as alleged to be inconsistent with any of the provisions referred to in Article 2.19 (1) (Scope and Definitions), a division of the Tribunal constituted under this Section shall, where relevant, after hearing the disputing parties, take into account proceedings pursuant to [Section XX (State to State dispute settlement)] or another international agreement in its decision, order or award. To this end, it may also, if it considers necessary, stay its proceedings. In acting pursuant to this provision the Tribunal shall respect Article 2.46 (6) (Provisional Award).

Article 2.33

Anti-Circumvention

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. The

[14] For greater certainty, the same loss or damage means loss or damage flowing from the same treatment which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

Article 2.34

Preliminary Objections

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal pursuant to Article 2.27 (7) (Tribunal of First Instance ("Tribunal")), and in any event before the first session of the division of the Tribunal, or 30 days after the respondent became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.

2. The respondent shall specify as precisely as possible the basis for the objection.

3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first meeting of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection, stating the grounds therefor. In the event that the objection is received after the first meeting of the division of the Tribunal, the Tribunal shall issue such decision or provisional award as soon as possible, and no later than 120 days after the objection was filed. In doing so, the Tribunal shall assume the alleged facts to be true, and may also consider any relevant facts not in dispute.

4. The decision of the Tribunal shall be without prejudice to the right of a disputing party to object, pursuant to Article 2.35 (Claims Unfounded as a Matter of Law) or in the course of the proceeding, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

Article 2.35

Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 2.46 (Provisional Award), even if the facts alleged were assumed to be true. The Tribunal may also consider any relevant facts not in dispute.

2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence. An objection may not be submitted under paragraph 1 as long as proceedings under Article 2.34 (Preliminary Objections) are pending, unless the Tribunal grants

leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. On receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or provisional award on the objection, stating the grounds therefor.

Article 2.36

Transparency

1. The "UNCITRAL Transparency Rules" shall apply to disputes under this Section, with the following additional obligations.

2. The request for consultations under Article 2.22 (Consultations), the request for a determination and the notice of determination under Article 2.23 (Request for Determination of the Respondent), the agreement to mediate under Article 2.21 (Mediation), the notice of challenge and the decision on challenge under Article 2.29 (Ethics), the request for consolidation under Article 2.45 (Consolidation) and all documents submitted to and issued by the Appeal Tribunal shall be included in the list of documents referred to in Article 3 (1) of the UNCITRAL Transparency Rules.

3. Exhibits shall be included in the list of documents mentioned in Article 3 (2) of the UNCITRAL Transparency Rules.

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the European Union or […] as the case may be shall make publicly available in a timely manner prior to the constitution of the division, relevant documents pursuant to paragraph 2, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository referred to in the UNCITRAL Transparency Rules.

5. A disputing party may disclose to other persons in connection with proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential or protected information in those documents.

Article 2.37

Interim Decisions

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's

jurisdiction. The Tribunal may not order the seizure of assets nor may it prevent the application of the treatment alleged to constitute a breach.

Article 2.38

Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order. After such an order has been rendered the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter.

Article 2.39

Security for Costs

1. For greater certainty, upon request, the Tribunal may order the claimant to post security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against it.

2. If the security for costs is not posted in full within 30 days after the Tribunal's order or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

Article 2.40

The Non-Disputing Party to the Agreement

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved,[15] deliver to the non-disputing Party:

   (a) a request for consultations referred to in Article 2.22 (Consultations), a notice requesting a determination referred to in Article 2.23 (Request for Determination of the Respondent), a claim referred to in Article 2.24 (Submission of a Claim) and any other documents that are appended to such documents;

   (b) on request:

[15] For greater certainty, the term confidential or protected information shall be understood as defined in and determined pursuant to Article 7 of the UNCITRAL Transparency Rules.

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal by a third person;

(iii) minutes or transcripts of hearings of the Tribunal, where available; and

(iv) orders, awards and decisions of the Tribunal.

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal.

2. The non-disputing Party has the right to attend a hearing held under this Section.

3. The Tribunal shall accept or, after consultation with the disputing parties, may invite written or oral submissions on issues relating to the interpretation of this Agreement from the non-disputing Party. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

Article 2.41

Intervention by Third Parties

1. The Tribunal shall permit any natural or legal person which can establish a direct and present interest in the result of the dispute (the intervener) to intervene as a third party. The intervention shall be limited to supporting, in whole or in part, the award sought by one of the disputing parties.

2. An application to intervene must be lodged within 90 days of the publication of submission of the claim pursuant to Article 2.24 (Submission of a Claim). The Tribunal shall rule on the application within 90 days, after giving the disputing parties an opportunity to submit their observations.

3. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the disputing parties, save, where applicable, confidential documents. The intervener may submit a statement in intervention within a time period set by the Tribunal after the communication of the procedural documents. The disputing parties shall have an opportunity to reply to the statement in intervention. The intervener shall be permitted to attend the hearings held under this Chapter and to make an oral statement.

4 In the event of an appeal, a natural or legal person who has intervened before the Tribunal shall be entitled to intervene before the Appeal Tribunal. Paragraph 3 shall apply mutatis mutandis.

5. The right of intervention conferred by this Article is without prejudice to the possibility for the Tribunal to accept amicus curiae briefs from third parties in accordance with Article 2.36 (Transparency).

6. For greater certainty, the fact that a natural or legal person is a creditor of the claimant shall not be considered as sufficient in itself to establish that it has a direct and present interest in the result of the dispute.

Article 2.42

Expert Reports

The Tribunal, at the request of a disputing party or, after consulting the disputing parties, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other matters raised by a disputing party in a proceeding.

Article 2.43

Indemnification and Other Compensation

The Tribunal shall not accept as a valid defence, counterclaim, set-off or similar claim the fact that the claimant or the locally established company has received, or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

Article 2.44

Role of the Parties to the Agreement

1. No Party shall bring an international claim, in respect of a dispute submitted pursuant to Article 2.24 (Submission of a Claim) or in respect of treatment covered by this Section and subject to mediation pursuant to Article 2.21 (Mediation), unless the other Party has failed to abide by and comply with the award rendered in such dispute or with a mutually agreed solution reached pursuant to Article 2.20 (Amicable Resolution) or 2.21 (Mediation). This shall not exclude the possibility of dispute settlement under [Section X (State to State dispute settlement)] in respect of a measure of general application even if that measure is alleged to have violated the Agreement as regards a specific investment in respect of which a dispute has been initiated pursuant to Article 2.24 (Submission of a Claim). This is without prejudice to Article 2.40 (The Non-Disputing Party to the Agreement) of this Section or Article 5 of the UNICTRAL Transparency Rules.

2. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 2.45

Consolidation

1. In the event that two or more claims submitted under this Section have a question of law or fact in common and arise out of the same events and circumstances, the respondent may submit to the President of the Tribunal a request for the consolidated consideration of all such claims or part of them. The request shall stipulate:

   (a) the names and addresses of the disputing parties to the claims sought to be consolidated;

   (b) the scope of the consolidation sought; and

   (c) the grounds for the request.

   The respondent shall also deliver the request to each claimant in a claim which the respondent seeks to consolidate.

2. In the event that all disputing parties to the claims sought to be consolidated agree on the consolidated consideration of the claims, the disputing parties shall submit a joint request to the President of the Tribunal pursuant to paragraph 1. The President of the Tribunal shall, after receipt of such joint request, constitute a new division (the "consolidating division") of the Tribunal pursuant to Article 2.27 (Tribunal of First Instance ("Tribunal")) which shall have jurisdiction over all or part of the claims which are subject to the joint consolidation request.

3. In the event that the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the receipt of the request for consolidation referred to in paragraph 1 by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division of the Tribunal pursuant to Article 2.27 (Tribunal of First Instance ("Tribunal")). The consolidating division shall assume jurisdiction over all or part of the claims, if, after considering the views of the disputing parties, it decides that to do so would best serve the interest of fair and efficient resolution of the claims, including the interest of consistency of awards.

4. The consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the dispute settlement rules chosen by agreement of the claimants from the list contained in Article 2.24 (Submission of a Claim).

5. If the claimants have not agreed upon the dispute settlement rules within 30 days after the date of receipt of the request for consolidated consideration by the last claimant to receive it, the consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the UNCITRAL arbitration rules.

6. Divisions of the Tribunal constituted under Article 2.27 (Tribunal of First Instance ("Tribunal")) shall cede jurisdiction in relation to the claims, or parts thereof, over which the consolidating division has jurisdiction and the proceedings of such divisions shall be stayed or adjourned, as appropriate. The award of the consolidating division of the Tribunal in relation to the parts of the claims over which it has assumed jurisdiction shall be binding on the divisions which have jurisdiction over the remainder of the claims, as of the date the award becomes final pursuant to Article 2.46 (6) (Provisional Award) or 2.46 (7) (Provisional Award).

7. A claimant whose claim is subject to consolidation may withdraw its claim or the part thereof subject to consolidation from dispute settlement proceedings under this Article and such claim or part thereof may not be resubmitted under Article 2.24 (Submission of a Claim).

8. At the request of the respondent, the consolidating division of the Tribunal, on the same basis and with the same effect as paragraphs 3 and 6 above, may decide whether it shall have jurisdiction over all or part of a claim falling within the scope of paragraph 1 above, which is submitted after the initiation of the consolidation proceedings.

9. At the request of one of the claimants, the consolidating division of the Tribunal may take such measures as it sees fit in order to preserve the confidentiality of protected information of that claimant vis-à-vis other claimants. Such measures may include the submission of redacted versions of documents containing protected information to the other claimants or arrangements to hold parts of the hearing in private.

Article 2.46

Provisional Award

1. Where the Tribunal concludes that the treatment in dispute is inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged by the claimant, the Tribunal may, on the basis of a request from the claimant, and after hearing the disputing parties, award only:

   (a) monetary damages and any applicable interest;

   (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the property at the time immediately before the expropriation or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 2.12 (Expropriation) of Section B (Investment Protection) of Chapter II (Investment).

   Where the claim was submitted on behalf of a locally-established company, any award under this paragraph shall provide that:

   (a) any monetary damages and interest shall be paid to the locally established company;

(b) any restitution shall be made to the locally established company.

The Tribunal may not order the repeal, cessation or modification of the treatment concerned.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, the locally established company, as a result of the breach of the relevant provisions of the Agreement, reduced by any prior damages or compensation already provided by the Party concerned.

3. The Tribunal may not award punitive damages.

4. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion such costs between the disputing parties if it determines that apportionment is appropriate in the circumstance of the case. Other reasonable costs, including the reasonable costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the case. Where only some parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The Appeal Tribunal shall deal with costs in accordance with this Article.

5. No later than one year after the entry into force of this Agreement, the […] Committee shall adopt supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by an unsuccessful claimant which is a natural person or a small or medium-sized enterprise. Such supplemental rules shall, in particular, take into account the financial resources of such claimants and the amounts of compensation sought.

6. The Tribunal shall issue a provisional award within 18 months of the date of submission of the claim. If that deadline cannot be respected, the Tribunal shall adopt a decision to that effect, which will specify the reasons for such delay. A provisional award shall become final if 90 days have elapsed after it has been issued and neither disputing party has appealed the award to the Appeal Tribunal.

7. Either disputing party may appeal the provisional award, pursuant to Article 2.47 (Appeal Procedure). In such an event, if the Appeal Tribunal modifies or reverses the provisional award of the Tribunal then the Tribunal shall, after hearing the disputing parties if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The provisional award will become final 90 days after its issuance. The Tribunal shall be bound by the findings made by the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the report of the Appeal Tribunal.

Article 2.47

Appeal Procedure

1. Either disputing party may appeal before the Appeal Tribunal a provisional award, within 90 days of its issuance. The grounds for appeal are:

   (a) that the Tribunal has erred in the interpretation or application of the applicable law;

   (b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or

   (c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by (a) and (b).

2. If the Appeal Tribunal rejects the appeal, the provisional award shall become final. The Appeal Tribunal may also dismiss the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded, in which case the provisional award shall become final. If the appeal is well founded, the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

3. As a general rule, the appeal proceedings shall not exceed 180 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.

4. A disputing party lodging an appeal shall provide security for the costs of appeal and for any amount awarded against it in the provisional award.

5. The provisions of Articles 2.26 (Third Party Funding), 2.36 (Transparency), 2.37 (Interim Decisions), 2.38 (Discontinuance), 2.40 (The Non-Disputing Party to the Agreement) shall apply mutatis mutandis in respect of the appeal procedure.

Article 2.48

Enforcement of Awards

1. Final awards issued pursuant to this Section by the Tribunal shall be binding between the disputing parties and shall not be subject to appeal, review, set aside, annulment or any other remedy.

2. Each Party shall recognize an award rendered pursuant to this Agreement as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.

3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.

4. For greater certainty, [Article XX (Rights and obligations of natural or juridical persons under this Agreement, Chapter YY)] shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.

5. For the purposes of Article 1 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, final awards issued pursuant to this Section shall be deemed to be arbitral awards and to relate to claims arising out of a commercial relationship or transaction.

6. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 2.24 (2) (a) (Submission of a Claim), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID).

ANNEX I

MEDIATION MECHANISM FOR INVESTOR-TO-STATE DISPUTES

Article 1

Objective and Scope

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

Article 2

Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing.
   Where the request concerns an alleged breach of the Agreement by the authorities of the European Union or by the authorities of the Member States of the European Union, and no respondent has been determined pursuant to Article 2.23 (Request for Determination of the Respondent) of Section C (Resolution of Investment Disputes and Investment Court System), it shall be addressed to the European Union. Where the request is accepted, the response shall specify whether the European Union or the Member State concerned will be a party to the mediation[16].

2. The party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 10 working days of its receipt.

Article 3

Selection of the Mediator

1. If both disputing parties agree to a mediation procedure, a mediator shall be selected in accordance with the procedure set out in Article 2.21 (Mediation) of Section C (Resolution of Investment Disputes and Investment Court System). The disputing parties shall endeavour to agree on a mediator within 15 working days from the receipt of the reply to the request.

2. A mediator shall not be a national of either Party to the Agreement, unless the disputing parties agree otherwise.

[16] For greater certainty, where the request concerns treatment by the European Union, the party to the mediation shall be the European Union and any Member State concerned shall be fully associated in the mediation. Where the request concerns exclusively treatment by a Member State, the party to the mediation shall be the Member State concerned, unless it requests the European Union to be party.

3. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

Article 4

Rules of the Mediation Procedure

1. Within 10 working days after the appointment of the mediator, the disputing party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other disputing party. Within 20 working days after the date of delivery of this submission, the other disputing party may provide, in writing, its comments to the description of the problem. Either disputing party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.

3. The mediator may offer advice and propose a solution for the consideration of the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party concerned, or by mutual agreement in any other location or by any other means.

5. The disputing parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

6. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential.

7. The procedure shall be terminated:

   (a) by the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;

   (b) by a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail;

   (c) by written notice of a disputing party.

Article 5

Implementation of a Mutually Agreed Solution

1. Where a solution has been agreed, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the disputing parties 15 working days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

Article 6

Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicative body take into consideration:

   (a) positions taken by a disputing party in the course of the mediation procedure;

   (b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or

   (c) advice given or proposals made by the mediator.

2. The mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Section C (Resolution of Investment Disputes and Investment Court System) and Chapter YY (State to State Dispute Settlement)].

3. Unless the disputing parties agree otherwise, and without prejudice to Article 2.22 (6) (Consultations), all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

Article 7

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

Article 8

Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.

2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that foreseen for Judges of the Tribunal under Article 2.27 (Tribunal of First Instance ("Tribunal")) of Section C (Resolution of Investment Disputes and Investment Court System).

ANNEX II

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL, THE APPEAL TRIBUNAL AND MEDIATORS

Article 1

Definitions

In this Code of Conduct:

(a) "member" means a Judge of the Tribunal or a Member of the Appeal Tribunal established pursuant to [Section C (Resolution of Investment Disputes and Investment Court System)];

(b) "mediator" means a person who conducts mediation in accordance with Article 2.21 (Mediation) of [Section C (Resolution of Investment Disputes and Investment Court System)];

(c) "candidate" means an individual who is under consideration for selection as a member of the Tribunal or Appeal Tribunal;

(d) "assistant" means a person who, under the terms of appointment of a member, assists the member in his research or supports him in his duties;

(e) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants;

(f) "party" means a disputing party under [Section C (Resolution of Investment Disputes and Investment Court System)].

Article 2

Responsibilities to the Process

Candidates and members shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in Articles 6 (Obligations of Former Members) and 7 (Confidentiality) of this Code of Conduct.

Article 3

Disclosure Obligations

1. Prior to their appointment candidates shall disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To this end, candidates shall make all reasonable efforts to become aware of any such interests, relationships or matters.

2. Members shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the disputing parties.

3. Members shall at all times continue to make all efforts to become aware of any interests, relationships or matters referred to in paragraph 1 of this Article. Members shall disclose such interests, relationships or matters by informing the Parties and, where relevant, the disputing parties.

Article 4

Duties of Members

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceeding and shall do so with fairness and diligence.

2. Members shall consider only those issues raised in the proceeding and which are necessary for a decision or award and shall not delegate this duty to any other person.

3. Members shall take all appropriate steps to ensure that their assistant and staff are aware of, and comply with, Articles 2 (Responsibilities to the Process), 3 (Disclosure Obligations), 5 (Independence and Impartiality of Members) and 7 (Confidentiality) of this Code of Conduct.

4. Members shall not engage in ex parte contacts concerning the proceeding.

Article 5

Independence and Impartiality of Members

1. Members must be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.

2. Members shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of their duties.

3. Members may not use their position to advance any personal or private interests and shall avoid actions that may create the impression that they are in a position to be influenced by others.

4. Members may not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.

5. Members must avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.

Article 6

Obligations of Former Members

All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or Appeal Tribunal.

Article 7

Confidentiality

1. No members or former members shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of the proceeding, and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

2. No members shall disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 2.36 (Transparency) of [Section C (Resolution of Investment Disputes and Investment Court System)] as applicable.

3. No members or former members shall at any time disclose the deliberations of the Tribunal or Appeal Tribunal, or any member's views, whatever they may be.

Article 8

Expenses

Each member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred, as well as the time and expenses of their assistant and staff.

Article 9

Mediators

The rules set out in this Code of Conduct as applying to members or former members shall apply, mutatis mutandis, to mediators.

CHAPTER III

CROSS-BORDER SUPPLY OF SERVICES

Article 3.1

Scope and Definitions

1. This Chapter applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:

   (a) audio-visual services;

   (b) national maritime cabotage[17]; and

   (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

      (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

      (ii) the selling and marketing of air transport services;

      (iii) computer reservation system (CRS) services;

      (iv) groundhandling services;

      (v) airport operation services;

2. Government procurement shall be dealt with by Chapter [X (on public procurement)]. Nothing in this Section shall be construed to limit the obligations of the Parties under Chapter [X (on public procurement)] or to impose any additional obligation with respect to government procurement.

3. Subsidies shall be dealt with by Chapter [YY (on Competition and Subsidies)] and the provisions of this Chapter shall not apply to subsidies granted by the Parties.

Article 3.2

Market Access

[17] Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in […] or a Member State of the European Union and another port or point located in […] or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in […] or a Member State of the European Union.

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment not less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in the Schedule of Specific Commitments in Annexes […] (lists of commitments on cross border supply of services), are defined as:

   (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test[18];

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

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

Article 3.3

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annexes […] (lists of commitments on cross border supply of services) and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.

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

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

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

[18] Subparagraph 2(a) includes measures which require a service supplier of the other Party to have an enterprise within the meaning of paragraph (d) of Article 1.3 (Definitions) or to be resident in a Party's territory as a condition for the cross-border supply of a service.

Article 3.4

Most Favoured Nation Treatment

[The EU reserves its right to propose a text on most favoured nation treatment]

Article 3.5

Schedule of Specific Commitments

The sectors liberalised by each of the Parties pursuant to this Section and the terms, limitations, conditions and qualifications referred to in Articles 3.2 (Market Access), 3.3 (National Treatment), and [Article 3.4 (Most Favoured Nation Treatment)] are set out in the schedules of commitments included in Annexes (…) [lists of commitments on cross-border supply of services [and list of MFN exemptions]].

Article 3.6

Review

The Parties shall review this Chapter and Annexes (Lists of commitments on cross-border supply of services) [X] years after the entry into force of this Agreement and at regular intervals thereafter, with a view to further deepening liberalisation and eliminating remaining restrictions and ensuring an overall balance of rights and obligations. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Schedules of Specific Commitments.

CHAPTER IV

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

Article 4.1

Scope and Definitions

1. This Chapter applies to measures of the Parties concerning the entry and temporary stay in their territories of business visitors for establishment purposes, intra-corporate-transferees, business sellers, contractual service suppliers and independent professionals in accordance with paragraph 2.

2. For the purpose of this Chapter:

   (a) "business visitors for establishment purposes" mean natural persons working in a senior position within a juridical person of a Party who are responsible for setting up an enterprise of such juridical person. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party.

   (b) "intra-corporate transferees" mean natural persons who have been employed by a juridical person or its branch or have been partners in it for at least one year and who are temporarily transferred to an enterprise of the juridical person in the territory of the other Party. The natural person concerned must belong to one of the following categories:

      (i) managers/executives: Persons working in a senior position within a juridical person of a Party, who primarily direct the management of the enterprise[19] in the other Party, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:

         (A) directing the enterprise or a department or subdivision thereof; and

         (B) supervising and controlling the work of other supervisory, professional or managerial employees; and

         (C) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.

      (ii) specialists: persons working within a juridical person possessing specialised knowledge essential to the enterprise's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a

[19] For greater certainty, while managers or executives do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;

(iii) trainee employees: Persons who have been employed by a juridical person or its branch for at least one year, possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods[20].

(c) "business sellers" mean natural persons who are representatives of a services or goods supplier of one Party seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party, nor are they commission agents.

(d) "contractual services suppliers" mean natural persons employed by a juridical person of a Party which itself is not an agency for placement and supply services of personnel nor acting through such an agency, which has not established in the territory of the other Party and which has concluded a bona fide contract to supply services with a final consumer in the other Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to provide services[21].

(e) "independent professionals" mean natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have not established in the territory of the other Party and who have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) to supply services with a final consumer in the latter Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services[22].

Article 4.2

Intra-Corporate Transferees and Business Visitors for Establishment Purposes

1. For every sector committed in accordance with Chapter II Section A of this Title, each Party shall allow investors of the other Party to employ in their enterprise natural persons of that other Party provided that such employees are business visitors for

[20] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES and HU, training must be linked to the university degree which has been obtained.

[21] The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

[22] The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

establishment purposes or intra corporate-transferees as defined in Article 4.1 (Scope and Definitions).

2. The entry and temporary stay shall be for a period of up to three years for managers/executives and specialists, one year for trainee employees and ninety days in any 12 month period for business visitors for establishment purposes.

3. For every sector committed in accordance with Chapter II Section A of this Title, Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex (…) (reservations on business visitors for establishment purposes and intra-corporate transferees) measures which are defined as limitations on the total number of natural persons that an investor may employ as business visitors for establishment purposes and intra-corporate transferees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

Article 4.3

Business Sellers

For every sector committed in accordance with Chapters II Section A or III of this Title and subject to any reservations listed in Annex (…) [reservations on business sellers], each Party shall allow the entry and temporary stay of business sellers for a period of up to ninety days in any twelve month period and shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex (…) (reservations on business sellers), measures which are defined as limitations on the total number of natural persons in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitation.

Article 4.4

Contractual Service Suppliers

1. The Parties reaffirm their respective obligations arising from their commitments under the General Agreement on Trade in Services with respect to the entry and temporary stay of contractual services suppliers.

2. For every sector listed below, each Party shall allow the supply of services into their territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 3 and any reservations listed in Annex (…) [reservations on contractual services sellers].

   [List of activities to be inserted]

3. The commitments undertaken by the Parties are subject to the following conditions:

(a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding twelve months.

(b) The natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least two years immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least five years professional experience[23] in the sector of activity which is the subject of the contract.

(c) The natural persons entering the other Party must possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[24] and

(ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.

(d) The natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the juridical person employing the natural person.

(e) The entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months[25] in any twelve month period or for the duration of the contract, whichever is less.

(f) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.

(g) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be requested by the laws, regulations or other legal requirements of the Party where the service is supplied.

(h) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, specified in Annex (…) [reservations on contractual services sellers].

[Placeholder for additional new category of mode 4 suppliers linked to (post-sale) installation or maintenance of goods]

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23 Obtained after having reached the age of majority

24 Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory

25 For the EU: The six months have to be in any twelve month period.

Article 4.5

Independent Professionals

1. For every sector listed below, the Parties shall allow the supply of services into their territory by independent professionals of the other Party, subject to the conditions specified in paragraph 3 and any reservations listed in Annex (…) [reservations on independent professionals].

   [list of activities to be inserted]

2. The commitments undertaken by the Parties are subject to the following conditions:

   (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding twelve months.

   (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.

   (c) The natural persons entering the other Party must possess:

      (i) a university degree or a qualification demonstrating knowledge of an equivalent level[26] and

      (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other legal requirements of the Party where the service is supplied.

   (d) The entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months in any twelve month period or for the duration of the contract, whatever is less.

   (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.

   (f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex (…) [reservations on independent professionals].

Article 4.6

Transparency

[26] Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons with respect to whom commitments are undertaken in accordance with this Chapter.

2. The information referred to in paragraph 1 shall, to the extent possible, include inter alia the following information relevant to the entry and temporary stay of natural persons:

   (a) entry conditions,

   (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions,

   (c) processing time,

   (d) applicable fees,

   (e) appeal procedures.

CHAPTER V

REGULATORY FRAMEWORK

SECTION A

DOMESTIC REGULATION

Article 5.1

Scope and Definitions

1. This Section applies to measures by the Parties relating to licencing requirements and procedures, qualification requirements and procedures that affect:

   (a) the cross-border supply of services;

   (b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise and operation of a covered investment;

   (c) the supply of a service through temporary stay in their territory of categories of natural persons as defined in Article 4.1 (Scope and Definitions).

2. This Section only applies to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.

3. This section does not apply to measures to the extent that they constitute limitations subject to scheduling under Articles 2.2 or 3.2 (Market Access) and/or Article 2.3 or 3.3 (National Treatment).

4. For the purpose of this Section,

   (a) "licencing requirements" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to carry out the activities as defined in paragraph 1 (a) to (c).

   (b) "licencing procedures" are administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as referred to in paragraph 1 (a) to (c), including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.

   (c) "qualification requirements" are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.

(d) "qualification procedures" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service.

(e) "competent authority" is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment or concerning the authorisation to establish in an economic activity other than services.

Article 5.2

Conditions for Licencing and Qualification

1. Each Party shall ensure that measures relating to licencing requirements, licencing procedures, qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

   (a) clear;

   (b) objective and transparent; and

   (c) pre-established and accessible to the public and interested persons.

3. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.

4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, each Party may take into account legitimate policy objectives,

including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

Article 5.3

Licencing and Qualification Procedures

1. Licencing and qualification procedures and formalities shall be clear, made public in advance, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service. Any licencing fees[27] which the applicants may incur from their application should be reasonable and shall not, in themselves, restrict the supply of the relevant service or the pursuit of the relevant economic activity.

2. Each party shall ensure that the procedures used by, and the decisions of, the competent authority in the licencing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorisation is required.

3. In case specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

4. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.

5. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify to the extent feasible the additional information required to complete the application, and provide the opportunity to correct deficiencies.

6. Authenticated copies should be accepted, whenever possible, in place of original documents.

7. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon formal request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

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[27] Licencing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

8. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

SECTION B

PROVISIONS OF GENERAL APPLICATION

Article 5.4

Mutual Recognition of Professional Qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies or respective authorities as appropriate, in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the [Committee] established pursuant to Article X (Specialised Committees). Such a joint recommendation shall be supported by evidence of:

   (a) the economic value of an envisaged agreement on mutual recognition of professional qualifications (hereinafter referred to as "Mutual Recognition Agreement"); and

   (b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible.

3. On receipt of a joint recommendation, the [Committee] shall, within a reasonable time, review the joint recommendation with a view to determining whether it is consistent with this Agreement.

4. When, on the basis of the information provided for in paragraph 2, the joint recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement.

SECTION C

DELIVERY SERVICES

Article 5.5

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all delivery services.

2. For the purpose of this Section:

   (a) "delivery services" mean postal and courier/express services, which include the following activities: the collection, sorting, transport, and delivery of postal items.

   (b) "postal item" means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of delivery service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue, and others.

   (c) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt.

   (d) "express mail services" means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under Universal Postal Union (UPU).

   (e) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory pursuant to a legislative measure by the Party.

   (f) "universal service" means the permanent provision of a delivery service of a specified quality at all points in the territory of a Party at affordable prices for all users.

   (g) "licence" means an authorisation, granted to an individual supplier by a regulatory authority, setting out procedures, obligations and requirements specific to the delivery services sector.

Article 5.6

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.

2. If a Party requires inbound Express Mail Services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

Article 5.7

Universal Service Funding

No Party may impose fees or other charges on the supply of a non-universal delivery service for the purpose of funding the supply of a universal service.[28]

Article 5.8

Prevention of Market Distortive Practices

Each Party shall ensure that a supplier of delivery services subject to a universal service obligation or a postal monopoly does not engage in market distortive practices such as:

(a) using revenues derived from the supply of such service to cross-subsidize the supply of an express delivery service or any non-universal delivery service, and

(b) unjustifiably differentiating among customers such as businesses, large volume mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

Article 5.9

Licences

1. When a Party requires a licence for the provision of delivery services, it shall make publicly available:

   (a) all licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

   (b) the terms and conditions of licences.

2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

3. Each Party shall inform the applicant of the reasons for denial of the licence in writing. Each party shall ensure that it institutes or maintains an appeal procedure through a body that is independent from the parties involved. This body may be a court.

Article 5.10

Independence of the Regulatory Body

[28] This paragraph does not apply to generally applicable taxation measures or administrative fees.

1. Each Party shall create or maintain a regulatory body which shall be legally distinct from and functionally independent from any supplier of delivery services. Parties that retain ownership or control of undertakings providing delivery services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that regulatory bodies perform their tasks in a transparent and timely manner. They shall ensure that regulatory bodies have adequate financial and human resources to carry out the task assigned to them.

3. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

SECTION D

TELECOMMUNICATIONS NETWORKS AND SERVICES

[The text will be submitted at a later stage]

SECTION E

FINANCIAL SERVICES

Article 5.11

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Chapters II Section A, III and IV of this Title.

2. For the purpose of this Chapter and of Chapters II Section A, III and IV of this Title

   (a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

      (i) insurance and insurance-related services

         (A) direct insurance (including co-insurance):

            (aa) life;

            (bb) non-life;

         (B) reinsurance and retrocession;

(C) insurance inter-mediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(aa) money market instruments (including cheques, bills, certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software;

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) "financial service supplier" means any natural or juridical person of a Party that seeks to provide or provides financial services. The term "financial service supplier" does not include a public entity.

(c) "public entity" means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

(d) "new financial service" means a service of a financial nature including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

(e) "self-regulatory organisation" means any non-governmental body, any securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

Article 5.12

Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) ensuring the integrity and stability of a Party's financial system.

2. The measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Article 5.13

Effective and Transparent Regulation

1. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

   On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

2. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, inter alia, the Basel Committee's "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the OECD's "Agreement on exchange of information on tax matters", the G20 "Statement on Transparency and exchange of information for tax purposes" and the Financial Action Task Force's "Forty Recommendations on Money Laundering" and "Nine Special recommendations on Terrorist Financing".

   The Parties take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations.

Article 5.14

New Financial Services

Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the former Party would permit its own financial service suppliers to provide in accordance with its domestic law in like situations, provided that the introduction of the new financial services does not require a new law or modification of an existing law. A Party may determine the institutional and legal form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 5.15

Data Processing

1. Each Party shall permit financial service suppliers of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service suppliers.

2. Nothing in paragraph 1 restricts the right of a Party to protect personal data and privacy, so long as such right is not used to circumvent the provisions of this Agreement.

3. Each Party shall adopt or maintain appropriate safeguards to protect privacy and personal data, including individual records and accounts.

Article 5.16

Specific Exceptions

1. Nothing in this Title shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Title shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.

4. The provisions of this Article shall not be construed as limiting the rights of investors and covered investments under Chapter II Section B (Investment Protection) of this Title.

Article 5.17

Self-regulatory Organisations

When a Party requires membership of, participation in, or access to, any self-regulatory organization in order for financial service suppliers of the other Party to supply financial

services in or into the territory of the first Party, the Party shall ensure observance of the obligations under Articles 2.3 (National Treatment) and 2.4 (Most Favored Nation Treatment) as well as 3.3 (National Treatment) [and 3.4 (Most Favored Nation Treatment)].

Article 5.18

Clearing and Payment Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph shall not confer access to the Party's lender of last resort facilities.

SECTION F

INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 5.19

Scope, Definitions and Principles

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters II Section A, III and IV of this Title.

2. For the purpose of this Section and Chapters II Section A, III and IV of this Title:

   (a) "international maritime transport services" means the transport of passengers and/or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country. This includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services.

   (b) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document

   (c) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third Party, or between a port of one Member State of the European Union and a port of another Member State of the European Union.

(d) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;

(i) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

(A) the loading or discharging of cargo to or from a ship;

(B) the lashing or unlashing of cargo;

(C) the reception/delivery and safekeeping of cargoes before shipment or after discharge;

(ii) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

(iii) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(iv) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(A) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;

(B) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(v) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(e) "feeder services" means the pre- and onward transportation by sea, between ports located in a Party, of international cargo, notably containerised, en route to a destination outside the territory of that Party.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

   (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;

   (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, inter alia, access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

4. In applying the principles referred to in subparagraphs 3 (a) and 3 (b), the Parties shall:

   (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

   (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with the conditions inscribed in its Schedule of Specific Commitments.

6. The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

7. Each Party shall permit the international maritime transport service suppliers of the other Party to re-position owned or leased empty containers which are not being carried as cargo against payment, between ports of the Philippines or between ports of a Member State of the European Union.

8. Each Party, subject to the authorisation by the competent authority where applicable, shall permit international maritime transport service suppliers of the other Party to provide feeder services between their national ports.

***NOTE**: The EU reserves the right to table in a dedicated chapter general exceptions, security exceptions and exceptions relating to taxation.*
Articles on capital movements and payments, restrictions in case of balance of payments and external financial difficulties or safeguards for the operation of the economic and monetary union, in the case of the European Union, will be inserted in the general/horizontal part of the Agreement and will apply to this Title. Paragraph 3 of Article 2.13 might be reviewed/deleted if it overlaps with these provisions.

*This **document** is the European Union's (EU) proposal for a legal text on state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

STATE-OWNED ENTERPRISES, ENTREPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES, AND DESIGNATED MONOPOLIES

Article X

(Delegated Authority)

Unless otherwise specified in this Agreement, each Party shall ensure that any person including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly that has been delegated regulatory, administrative or other governmental authority by a Party at any level of government, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Article X.1

Definitions

For the purposes of this Chapter, the following definitions shall apply:

(a) "state-owned enterprise" means an enterprise, including any subsidiary, in which a Party, directly or indirectly:

(i) owns more than 50% of the enterprise's subscribed capital or the votes attached to the shares issued by the enterprise;

(ii) can appoint more than half of the members of the enterprise's board of directors or an equivalent body; or

(iii) exercises or has the possibility to exercise control over the enterprise.

(b) "enterprise granted special rights or privileges" means any enterprise, public or private, including any subsidiary, that has been granted by a Party, in law or in fact, special rights or privileges. Special rights or privileges are granted by a Party when it designates or limits to two or more the number of enterprises authorized to provide a good or a service, other than according to objective, proportional and non-

discriminatory criteria, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions.

(c) "designated monopoly" means an entity, including a group of entities or a government agency, and any subsidiary thereof, that in a relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant.

(d) "designate" means to establish or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service.

(e) "commercial activities" means activities, the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by the enterprise, and are undertaken with an orientation towards profit-making[1].

(f) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry.

(g) "service supplied in the exercise of governmental authority" has the same meaning as in the GATS.

Article X.2

Scope of Application

1. The Parties confirm their rights and obligations under paragraphs 1 through 3 of Article XVII of the GATT 1994, the Understanding on the Interpretation of Article XVII of the GATT 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of the GATS.

2. This Chapter applies to all enterprises defined in Article X.1 (Definitions) engaged in a commercial activity. Where an enterprise combines commercial and non-commercial activities[2], only the commercial activities of that enterprise are covered by this Chapter.

3. This Chapter applies to all enterprises defined in Article X.1 (Definitions) at central and sub-central levels of government.

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[1] For greater certainty, this excludes activities undertaken by an enterprise: (a) which operates on a not-for-profit basis; or (b) which operates on cost recovery basis.

[2] Such as carrying out a legitimate public service obligation.

4. This Chapter shall not apply to "covered procurement" by a Party or its procuring entities within the meaning of Article XX of Chapter [YY] (Public Procurement).

5. This Chapter shall not apply to any service supplied in the exercise of governmental authority.

6. This Chapter shall not apply to enterprises defined in Article X.1 (Definitions) if in any one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of the enterprise was less than 200 million SDR.

7. Article X.4 (Non-discrimination and Commercial Considerations) does not apply to the sectors which are outside the scope of this Agreement.

8. Article X.4 (Non-discrimination and Commercial Considerations) applies to the commercial activities of enterprises as defined in Article X.1 (Definitions), if the same activity would affect trade in services and investment with respect to which a Party has undertaken a commitment under Article XX (National Treatment) or Article XY (Most Favoured Nation Treatment) of Title/Chapter [XX] (Services and Investment), subject to conditions or qualifications set out in its schedule pursuant to Articles XX (National Treatment) and XY (Most Favoured Nation Treatment). For greater certainty, in case of conflict between paragraph 4 of this Article and conditions or qualifications set out in its schedule pursuant to Articles XX (National Treatment) and XY (Most Favoured Nation Treatment), the latter will prevail.

Article X.3

General Provisions

1. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter prevents the Parties from establishing or maintaining state-owned enterprises or designating or maintaining monopolies or from granting enterprises special rights or privileges.

2. Where an enterprise falls within the scope of application of this Chapter, the Parties shall not require or encourage such an enterprise to act in a manner inconsistent with this Chapter.

Article X.4

Non-discrimination and Commercial Considerations

1. Each Party shall ensure that its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies, when engaging in commercial activities:

(a) act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil any legitimate public service obligations that are not inconsistent with subparagraph 1 (b); and

(b) accord to enterprises of the other Party, enterprises that are investments of investors of the other Party, goods of the other Party, and services of the other Party, treatment no less favourable than they accord to, respectively, enterprises of the Party which are in like situations, like goods of the Party, and like services of the Party, with respect to their purchases or sales of goods or services in the relevant market.

2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

(b) refusing to purchase or supply goods or services,

provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations.

Article X.5

Neutral Regulation

1. The Parties shall respect and make best use of relevant international standards including, inter alia, the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any regulatory body or function that it establishes or maintains

(a) is independent from and not accountable to any of the enterprises that it regulates in order to ensure the effectiveness of the regulatory function, and

(b) acts impartially[3] in like circumstances with respect to all enterprises that it regulates, including enterprises defined in Article 1 (Definitions).[4]

3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner, including on enterprises defined in Article 1 (Definitions).

[3] For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body.

[4] For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body in other Chapters, the relevant provision in the other Chapters as set out in this Agreement shall prevail.

Article X.6

Transparency

1. A Party which has reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of an enterprise or enterprises defined in Article X.1of the other Party and subject to the scope of this Chapter as defined in Article 2 may request in written form that Party to supply information about the operations of that enterprise related to the carrying out of the provisions of this Chapter.

2. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indications of the interests under this Chapter that the requesting Party believes to be adversely affected that the enterprise is engaging in practices that hinder trade or investment between the Parties in a manner inconsistent with this Chapter.

   This information includes the following:

   (a) the ownership and the voting structure of the enterprise, indicating the percentage of shares and the percentage of voting rights that a Party and/or an enterprise defined in Article X.1 (Definitions) cumulatively own or hold;

   (b) a description of any special shares or special voting or other rights that a Party and/or an enterprise defined in Article X.1 (Definitions) hold, where such rights differ from the rights attached to the general common shares of such entity;

   (c) the organisational structure of the enterprise, the composition of its board of directors or of an equivalent body exercising direct or indirect control in such an enterprise; and cross-holdings and other links with different enterprises or groups of enterprises, as defined in Article X.1 (Definitions);

   (d) a description of which government departments or public bodies regulate and/or monitor the enterprise, a description of the reporting requirements imposed on the enterprises by these departments or public bodies, and the rights and practices of the government or any public bodies in the appointment, dismissal or remuneration of managers;

   (e) annual revenue or total assets over the most recent 3 year period of that enterprise, or both;

   (f) exemptions, non-conforming measures, immunities and any other measures derogating from the application of a Party's laws or regulations or granting favourable treatment by a Party, applicable in the territory of the requested Party to any enterprise defined in Article X.1 (Definitions); and

(g) any additional information regarding the enterprise as defined in Article X.1 (Definitions) that is publicly available, including annual financial reports and third party audits.

3. The provisions of paragraphs 1 and 2 shall not require any Party to disclose confidential information the disclosure of which would be inconsistent with its laws and regulations, impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

4. If the requested information is not available to the Party, that Party shall provide the reasons for this in writing to the other Party who requested the information.

Article X.7

Review Clause

The Parties shall review this Chapter no later than [five] years after the entry into force of this Agreement and at regular intervals thereafter, notably in light of its effectiveness and administrative burden. The Parties shall consult each other on the need to modify this Chapter in light of the experience gained and the development of any corresponding rules in the WTO.

*This **document** is the European Union's (EU) proposal for a legal text on sanitary and phytosanitary measures in the EU-Philippines FTA. It has been tabled for discussion with the Philippines. The actual text in the final agreement will be a result of negotiations between the EU and the Philippines.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

SANITARY AND PHYTOSANITARY MEASURES

Article X.1

Objectives

The objectives of this Chapter are:

(a) to enhance the practical implementation of the principles and disciplines contained within the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as "SPS Agreement") and applicable international standards, guidelines and recommendations developed by relevant international organisations;

(b) to protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that SPS measures imposed by each Party do not create unnecessary obstacles to trade;

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

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

(e) to enhance collaboration between the Parties on animal welfare issues.

Article X.2

Scope

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

2. This Chapter shall also apply to animal welfare matters.

3. Nothing in this Chapter shall affect the rights of the Parties under the WTO Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Chapter.

Article X.3

General Provisions

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

2. Each Party commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party.

3. SPS measures cannot be used so as to create unjustified barriers to trade.

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

5. In the same way, the Parties will neither use the procedures mentioned in paragraph 4 nor the requests of additional information to delay the access to the market without scientific and/or technical justification.

6. Each Party shall ensure that administrative procedures concerning the import requirements on food safety, animal health and plant health are not more burdensome or trade restrictive than necessary to give the importing Party adequate confidence that these requirements are met. These administrative procedures shall be set with the objective to minimise negative trade effects and to simplify and expedite the clearance process while meeting the importing Party requirements. Where official certificates are required, these shall be set in line with the principles laid down in the international standards of the Codex Alimentarius, the International Plant Protection Convention (hereinafter referred to as "IPPC") and the World Organisation for Animal Health (hereinafter referred to as "OIE") and the importing Party shall not put in place any additional administrative system that unnecessarily hampers trade or duplicates the official certificate, this includes import authorisation procedures.

Article X.4

Definitions

For the purposes of this Chapter, the definitions contained in Annex A of the SPS Agreement shall apply.

The Parties may agree on other definitions for the application of this Chapter, taking into consideration the glossaries and definitions of the relevant international organizations, such as the Codex Alimentarius, the OIE, and the IPPC. In the event of an inconsistency between the definitions agreed by both Parties and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

In addition:

(a) "import conditions" means any sanitary or phytosanitary measures as set out in Annex A of the SPS Agreement that is to be complied with for imports to reach the appropriate level of protection of the importing Party.

(b) "protected zone" for a specific regulated pest means an officially defined geographical area in the EU in which that organism is not established in spite of favourable conditions and its presence in other parts of the territory of the Union.

(c) "competent authorities" means those organizations recognised by each Party as responsible for developing, implementing and administering the SPS measures within its territory.

Article X.5

Competent Authorities and Contact Points

As of the date of entry into force, the Parties shall provide the other with a description of the competent authorities for the implementation of this Chapter and a contact point for communication on all matters arising under this Chapter.

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

Article X.6

Risk Assessment

The Parties shall ensure that their SPS measures are based on a risk assessment in accordance with relevant provisions, including Article 5 of the SPS Agreement.

Article X.7

Import Conditions, Import Procedures and Trade Facilitation

1. Import conditions shall be applicable to the entire territory of the exporting Party.

The importing Party shall give consideration to any request of the exporting Party, for a review of the import conditions existing between the Parties on the date of entry into force of this Agreement.

The importing Party shall ensure full transparency on its import conditions, its import authorisation procedures and the frequency of import checks carried out on products from the other Party.

2. With respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, including that for approval and clearance process, the Parties shall ensure that:

   (a) such procedures are simplified, expedited and completed without undue delay, in accordance with the SPS Agreement;

   (b) such procedures are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party;

   (c) the standard processing period of each procedure is published or the anticipated processing period is communicated to the applicant upon request; and

   (d) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs.

3. In accordance with applicable standards agreed under the IPPC, the Parties undertake to maintain adequate information on their pest status (including surveillance, eradication and containment programmes and their results) in order to support the categorization of pests and to justify import phytosanitary measures.

   The Parties shall establish lists of regulated pests and regulated commodities where a phytosanitary concern exists. The lists shall contain:

   (a) the pests not known to occur within any part of the Party's own territory;

   (b) the pests known to occur within any part of the Party's own territory and under official control; and

   (c) the pests known to occur within any part of the Party's own territory, under official control and for which pest-free areas are established.

   The Parties shall make available their lists of regulated pests, regulated commodities and the phytosanitary import requirements for all regulated commodities. This information shall include, as appropriate the additional declarations, as prescribed by the importing Party.

4. Where a range of alternative sanitary or phytosanitary measures may be available to attain the appropriate level of protection of the importing Party, the Parties shall, upon

request of the exporting Party, consider selecting the more practicable and less trade-restrictive solution.

5. Where sanitary or phytosanitary certificates issued by the exporting Party are required between the Parties, the certificates shall be agreed between the Parties, taking into account international standards, guidelines or recommendation of Codex Alimentarius, OIE or IPPC.

6. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

7. Consignments of regulated commodities shall be accepted on the basis of adequate guarantees by the exporting Party, without:

   (a) pre-clearance programmes. Control activities at the country of origin performed by the National Plant Protection Organisation (NPPO) of the country of destination should not be applied as a permanent import measure and only foreseen to facilitate new trade. On a voluntary basis, the NPPO of the country of origin may request pre-clearance within the inspection activities carried out by the importing countries as a trade facilitation tool;

   (b) import licences or import permits; and

   (c) phytosanitary protocols or work plans prescribed by the importing party.

8. The exporting Party shall ensure that products exported to the importing Party meet the appropriate level of protection of the importing Party. The responsibility for the implementation of adequate control measures and inspections lies with the exporting Party. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrate, to the satisfaction of the importing Party, that the import conditions are fulfilled.

9. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with importations. These checks shall be carried out without undue delay and with minimum trade disrupting effects. When products do not conform to the requirements of the importing Party, any action taken by the importing Party shall follow international standards and should be proportionate to the risk involved.

10. Any fees imposed for the procedures on imported products from the exporting Party shall be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.

Article X.8

Audit

1. In order to attain and maintain confidence in the effective implementation of the provisions of this Chapter, the importing Party, within the scope of this Chapter, has the right to carry out audits, including:

   (a) through audit visits to the exporting Party, of all or part of the exporting Party's control and certification system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC. The expenses of such audits shall be borne by the Party carrying out the audit; and

   (b) by requiring information from the exporting Party about its control and certification system and be informed of the results of the controls carried out thereunder.

2. The exporting Party shall give reasonable access to the importing Party for inspection, verification, testing, audit and other relevant procedures.

3. The Parties shall provide the results and conclusions of the audits carried out in the territory of the other Party.

4. If the importing Party decides to carry out an audit visit to the exporting Party, the visit shall be notified by the importing Party to the exporting Party at least 60 calendar days before the audit visit is to be carried out, except if agreed otherwise. Any modification to such visit shall be agreed by the Parties.

5. The draft report of the audit visit shall be shared with the auditee within 45 calendar days after completion of the audits. The auditee shall have 30 calendar days to comment on the draft report. Comments made by the auditee shall be attached to and, where appropriate, included in the final report. However, where a significant public, animal or plant health risk has been identified during the audit, the importing Party shall inform the auditee as quickly as possible and in any case within 10 working days following the end of the audit.

6. The costs incurred in carrying out the audits shall be borne by the importing Party.

Article X.9

Procedure for Listing of Establishments or Facilities

1. Where establishments or facilities are required to be included on a list by the importing Party, the importing Party shall approve establishments or facilities which are situated on the territory of the exporting Party without prior inspection if:

   (a) The exporting Party has requested such an approval for a given establishment or facility;

   (b) The import of the product has been authorised, if so required by the competent authority of the importing Party;

(c) The establishment or facility concerned has been approved by the competent authority of the exporting Party;

(d) The competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and

(e) The exporting Party has provided any relevant information and appropriate guarantees requested by the importing Party.

Unless additional information is requested, the importing Party shall take the necessary legislative or administrative measures in accordance with its applicable legal procedures to allow imports within 40 calendar days of the receipt of the request of the exporting Party. If the importing Party rejects the request for approval, it shall inform without delay the exporting Party of the elements and justification upon which the decision was based.

2. The importing Party shall make its lists of approved establishments or facilities publicly available.

Article X.10

Adaptation to Regional Conditions

Animals, animal products and animal by-products

1. The Parties recognise the principle(s) of zoning (and of compartmentalisation) which they agree to apply in their trade. The Parties also recognise the official animal health status as determined by the OIE.

2. The importing Party shall recognise the health status of zones and zoning decisions as determined by the exporting Party in accordance with the provisions of the OIE Terrestrial Animal Health Code and the OIE Aquatic Animal Health Code. The [Committee or body defined by the Agreement] referred to in Article [XX] may define further details for the procedure for the mutual recognition of such areas, taking into account any relevant SPS Agreement and OIE standards, guidelines or recommendations. This procedure will include situations related to outbreaks.

3. With references to paragraph 2 of this Article, the exporting Party shall if requested in exceptional cases by the importing Party, provide a thorough explanation and supporting data for the determinations and decisions covered by this Article.

The importing Party shall assess the received information within 15 working days of its receipt. Any audit the importing Party may request shall be carried out in accordance with Article X.8 (Audit).

In case the importing Party requires audit and unless otherwise agreed between the Parties, the audit shall be carried out within 25 working days following the receipt of the request.

In cases the importing party requires additional information and/or audits, the overall procedures including the decisions shall be finalised within two months, unless otherwise agreed between the Parties.

4. Where a Party considers that it has a special status with respect to any other disease not referred to in paragraphs 1 and 2, it may request recognition of this status.

Plants and plant products

5. The importing Party shall recognize the determination of phytosanitary status of the exporting Party in accordance with the following provisions:

   (a) The Parties recognize the concepts of pest-free areas, pest-free places of production and pest-free production sites, as well as areas of low pest prevalence as specified in relevant FAO and IPPC International Standards for Phytosanitary Measures (ISPM), and of protected zones which they agree to apply in their trade.

   (b) When establishing or maintaining phytosanitary measures, the importing Party shall take into account pest-free areas, pest-free places of production, pest-free production sites, areas of low pest prevalence, as well as protected zones established by the exporting Party.

   (c) The exporting Party shall identify pest-free areas, pest-free places of production, pest-free production sites, protected zones or areas of low pest prevalence to the other Party and, upon request of the importing Party, provide a full explanation and supporting data as provided for in the relevant ISPM or otherwise deemed appropriate. Unless the importing Party raises an objection and requests consultations within 90 working days, the regionalization decision so notified shall be understood as accepted.

   (d) The importing Party shall assess additional information requested within 90 working days after receipt. Any verification the importing Party may request shall be carried out in accordance with Article X.8 (Audit) and within 3 months following receipt of the request for verification unless otherwise agreed between the Parties, taking into account the biology of the pest and the crop concerned.

Article X.11

Transparency and Exchange of Information

1. The Parties shall:

   (a) ensure transparency as regards SPS measures applicable to trade;

(b) enhance mutual understanding of each Party's SPS measures and their application;

(c) exchange information on matters related to the development and application of SPS measures, including the progress on new available scientific evidence, that affect, or may affect, trade between the Parties with a view to minimizing negative trade effects;

(d) upon request of a Party, communicate the requirements that apply for the import of specific products within 15 working days; and

(e) upon request of a Party, communicate the state of play and progress of the procedure for the authorisation of specific products within 15 working days.

2. Each Party shall notify in writing to the other Party within 2 working days, of any serious or significant human, animal or plant life or health risk, including any food emergencies, affecting commodities for which trade takes place.

3. When the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules or when the above information has been made available on the official, publicly accessible and fee-free websites of the Parties, the addresses of which are communicated to other Party, the information exchange shall be considered to have taken place.

4. All notifications under this Chapter shall be made to the contact points referred to under Article X.5 (Competent Authorities and Contact Points).

Article X.12

Technical Consultations

1. Where a Party has significant concerns regarding human, animal, or plant life or health or concerns on measures proposed or implemented by the other Party, it can request technical consultations.

2. The other Party shall:

(a) respond to such a request no later than 30 calendar days;

(b) engage in the technical consultations to address these concerns; and

(c) make every effort to reach a mutually acceptable solution.

3. Each Party shall endeavour to provide the necessary information to avoid a disruption in trade and to reach a mutually acceptable solution.

4. Where the Parties have already established communication [channels/mechanisms/framework] for such purposes, they shall utilize them to the maximum extent possible in order to avoid unnecessary duplication.

5. The provisions of this Article do not preclude the [Committee or body defined by the Agreement] referred to in Article [XX] from considering the concerns referred to in paragraph 1.

Article X.13

Emergency Measures

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

   (a) immediately, and in any case no later than 24 hours, notify the competent authorities of the other Party and the contact point designated under Article X.5 (Competent Authorities and Contact Points) of such emergency measure;

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

   (c) engage, if necessary, in technical consultations as referred to in Article X.12 (Technical Consultations); and

   (d) take the comments referred to in subparagraph (b) and results of technical consultations referred to in subparagraph (c) into account.

2. The importing Party shall consider information provided in a timely manner by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties, in order to avoid unnecessary disruptions to trade.

3. The importing Party shall ensure that any emergency measure taken under paragraph 1 is not maintained without scientific evidence. It shall review the measure with a view to avoid unnecessary trade disruption and to minimize its negative effect on trade or to replace it by a permanent measure.

Article X.14

Collaboration

1. The Parties recognise that antibiotic resistance is a serious threat to human and animal health. Antibiotic use in animal production can contribute to antibiotic resistance that may represent a risk to man. The Parties recognise that the nature of the threat requires a transnational and “One Health” approach.

2. Parties shall collaborate to reduce the use of antibiotics in animal production and to ban their use as growth promotors with the aim to combat antibiotic resistance in line with the "One Health" approach.

3. Parties shall collaborate in and follow existing and future guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote the prudent and responsible use of antibiotics in animal husbandry and veterinary practices.

4. Parties shall promote the collaboration in all the multilateral fora, in particular with the international standard bodies.

5. Parties shall promote the collaboration on animal welfare.

6. The [Committee or body defined by the Agreement] referred to in Article [XX] will exchange information, expertise, experiences and good practices in the field of matters covered by paragraphs 2, 3 and 4 of this Article.

Article X.15

Equivalence

1. The Parties recognise that the application of equivalence that principle set down in Article 4 of the SPS Agreement is an important tool for trade facilitation and has mutual benefits for both exporting and importing Parties. A determination of equivalence may be made in relation to partial or full equivalence of sanitary and phytosanitary measures and systems.

2. An importing Party shall accept an exporting Party's SPS measures as equivalent if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection. To facilitate a determination of equivalence, a Party shall, on request, advise the other Party of the objective of any relevant sanitary or phytosanitary measures. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

3. Each Party shall, upon request, enter into consultations with the aim of achieving bilateral arrangements related to the (determination of) equivalence of specified SPS measures.

4. The Parties shall, within three months after receipt request from exporting Party, initiate the consultation process of equivalent determination. The determination of equivalence shall be finalised without undue delay after the demonstration of equivalence of the proposed measures by the exporting Party. The importing Party shall accelerate the assessment taking into account any knowledge and past experience it has in trading with the exporting country to make the determination as efficiently as possible.

5. In case of multiple requests from the exporting Party, the Parties shall agree within the [Committee or body defined by the Agreement] referred to in Article [XX] on a time schedule in which they shall initiate the process.

6. The consideration by a Party of a request from another Party for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question. When an equivalence determination is made, it shall be formally recorded and apply to the trade between the Parties in the relevant area without delay.

7. Where equivalence has been determined, the Parties may agree on alternative import conditions.

[Article X.16

Institutional Provisions]

[placeholder]