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CP 496



Treaty Series No. 34 (2025)

# Free Trade Agreement

between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and  
the United Kingdom of Great Britain and Northern Ireland

London, 8 July 2021

[The Agreement entered into force 1 September 2022]

*Presented to Parliament  
by the Secretary of State for Foreign, Commonwealth and Development Affairs  
by Command of His Majesty  
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ISBN 978-1-5286-5920-8

E03413170 07/25

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Global on behalf of the Controller of His Majesty's Stationery Office

**FREE TRADE AGREEMENT BETWEEN ICELAND, THE  
PRINCIPALITY OF LIECHTENSTEIN AND THE KINGDOM  
OF NORWAY AND THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND**

**PREAMBLE**

Iceland, the Principality of Liechtenstein and the Kingdom of Norway (EEA EFTA States),

and

The United Kingdom of Great Britain and Northern Ireland (the United Kingdom),

hereinafter each individually referred to as a “Party” or collectively as the “Parties”,

**REAFFIRMING** the historic and deep partnerships between the Parties and the common desire to protect these relationships;

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

**DETERMINED** to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement) and the other agreements negotiated thereunder, thereby contributing to the harmonious development and expansion of world trade;

**REAFFIRMING** their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including as set out in the United Nations Charter and the Universal Declaration of Human Rights;

**AIMING** to promote inclusive economic growth, create new employment opportunities, improve living standards, ensure equal opportunities for all and ensure high levels of public health and protection of health and safety and of the environment;

**REAFFIRMING** their commitment to pursue the objective of sustainable development and recognising the importance of coherent and mutually supportive trade, environmental, and labour policies in this respect;

**RECALLING** the respect for the fundamental principles and rights at work, including the principles set out in the relevant International Labour Organization (ILO) Conventions to which they are a party;

**DETERMINED** to implement this Agreement in line with the objectives to preserve and protect the environment and to combat climate change and its impacts, consistent with each Party's commitments under Multilateral Environmental Agreements;

**RECOGNISING** the importance of ensuring predictability for the trading communities of the Parties by establishing a legal framework to strengthen their trading relationship;

**AFFIRMING** their commitment to prevent and combat corruption in international trade and investment and to promote the principles of transparency and good public governance;

**ACKNOWLEDGING** the importance of good corporate governance and responsible business conduct for sustainable development, and affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the UN Global Compact;

**RECOGNISING** the Parties' respective autonomy and right to regulate in order to achieve legitimate public policy objectives;

**BELIEVING** that creating a clearly established and secured trade and investment framework through mutually advantageous rules to govern trade and investment between the Parties would enhance the competitiveness of their economies, make their markets more efficient and vibrant and ensure a predictable commercial environment for further expansion of trade and investment between them;

**HAVE AGREED**, in pursuit of the above, to conclude the following Free Trade Agreement (Agreement):

# CHAPTER 1

## GENERAL PROVISIONS

### ARTICLE 1.1

#### *Objectives*

1. The Parties hereby establish a free trade area in accordance with the provisions of this Agreement, which is based on trade relations between market economies and on the respect for principles of democracy and the rule of law, and respect for human rights, with a view to spurring prosperity and sustainable development.
2. The objectives of this Agreement are:
  - (a) to facilitate and liberalise trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994;
  - (b) to liberalise trade in services, in conformity with Article V of the General Agreement on Trade in Services;
  - (c) to mutually enhance investment opportunities;
  - (d) to prevent, eliminate or reduce unnecessary technical barriers to trade;
  - (e) to protect human, animal or plant life or health while facilitating trade and ensuring that the Parties' sanitary and phytosanitary measures do not create unnecessary barriers to trade;
  - (f) to promote open and fair competition in their economies, particularly as it relates to the economic relations between the Parties;
  - (g) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;
  - (h) to ensure adequate and effective protection of intellectual property rights, in accordance with international standards;
  - (i) to develop international trade in such a way as to contribute to the objective of sustainable development, and to ensure that this objective is integrated and reflected in the Parties' trade relations; and
  - (j) to contribute to the harmonious development and diversification of world trade.

## ARTICLE 1.2

### ***Territorial Application***

1. Unless otherwise specified, this Agreement applies to:
  - (a) the land territory, internal waters and the territorial sea of a Party, and the airspace above the territory of a Party, in accordance with international law;
  - (b) the exclusive economic zone and the continental shelf of a Party, in accordance with international law; and
  - (c) the Bailiwicks of Guernsey and Jersey and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose international relations the United Kingdom is responsible, as regards:
    - (i) Section 2.1 (General Provisions on Trade in Goods);
    - (ii) Annex I (Rules of Origin);
    - (iii) Section 2.2 (Technical Barriers to Trade);
    - (iv) Section 2.3 (Sanitary and Phytosanitary Measures); and
    - (v) Section 2.4 (Customs and Trade Facilitation).
2. This Agreement shall not apply to the Norwegian territory of Svalbard, except for trade in goods.

## ARTICLE 1.3

### ***Territorial Extension***

1. This Agreement, or specified provisions of this Agreement, may be extended to any territories for whose international relations the United Kingdom is responsible, as may be agreed between the United Kingdom and the other Parties to this Agreement.
2. At any time after this Agreement is extended to a territory for whose international relations the United Kingdom is responsible in accordance with paragraph 1, the United Kingdom may provide written notice to the Depositary that this Agreement shall no longer apply to a territory for whose international relations the United Kingdom is responsible. The notification shall take effect 12 months after the date on which the notification is received by the Depositary, unless the Parties agree otherwise.



#### ARTICLE 1.4

##### ***Trade and Economic Relations Governed by this Agreement***

1. This Agreement applies to the trade and economic relations between, on the one side, the individual EEA EFTA States and, on the other side, the United Kingdom, but not to the trade and economic relations between individual EEA EFTA States, unless otherwise provided in this Agreement.
2. The provisions in this Agreement covered by the Additional Agreement of 11 February 2019 between the United Kingdom of Great Britain and Northern Ireland, the Swiss Confederation and the Principality of Liechtenstein extending to the Principality of Liechtenstein certain provisions of the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, the Treaty of 29 March 1923 between Switzerland and Liechtenstein on Accession of the Principality of Liechtenstein to the Swiss Customs Area (Customs Treaty) and the Treaty of 22 December 1978 between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection shall not apply to Liechtenstein.
3. In case of any inconsistencies between this Agreement and an agreement referred to in paragraph 2, the latter shall prevail.

#### ARTICLE 1.5

##### ***Relation to Other International Agreements***

The Parties confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which they are a party, and any other international agreement to which they are a party.

#### ARTICLE 1.6

##### ***Fulfilment of Obligations***

1. Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement.
2. Each Party shall ensure the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

## ARTICLE 1.7

### *Transparency*

1. The Parties shall publish, or otherwise make publicly available, their laws, regulations, judicial decisions, administrative rulings of general application as well as their respective international agreements, that may affect the operation of this Agreement.
2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.
3. Each Party shall ensure that its administrative proceedings applying its laws, regulations, judicial decisions or administrative rulings of general application to a particular person, good or service of another Party in a specific case:
  - (a) endeavour to provide reasonable notice to persons that are directly affected by a proceeding, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in controversy;
  - (b) provide a person referred to in subparagraph (a) a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and
  - (c) are conducted in accordance with its law.
4. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its tribunals carry out procedures for appeal or review in a non-discriminatory and impartial manner; that they are impartial and are independent of the office or authority entrusted with administrative enforcement; and that they do not have any substantial interest in the outcome of the matter.
5. Each Party shall ensure that, in any tribunals or procedures referred to in paragraph 4, the parties to the proceeding are provided with a reasonable opportunity to support or defend their respective positions.
6. Nothing in this Agreement shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.

7. In case of any inconsistency between this Article and provisions relating to transparency in other parts of this Agreement, the latter shall prevail to the extent of the inconsistency.

**CHAPTER 2**  
**TRADE IN GOODS<sup>1</sup>**

**SECTION 2.1**

**GENERAL PROVISIONS ON TRADE IN GOODS<sup>2</sup>**

ARTICLE 2.1

***Objective***

The objective of this Chapter is to facilitate and liberalise trade in goods between the Parties in accordance with the provisions of this Agreement and in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994) including its interpretive notes.

ARTICLE 2.2

***Scope***

This Chapter applies to trade in goods between the Parties.

ARTICLE 2.3

***Definitions***

For the purposes of this Chapter:

- (a) “consular transactions” means the procedure of obtaining from a consul of the importing Party in the exporting Party, or in a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper’s export declaration or any other customs documentation in connection with the importation of the good;
- (b) “customs authorities” means:
  - (i) for the United Kingdom: Her Majesty’s Revenue and Customs and any other authority responsible for customs matters;

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<sup>1</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Chapter, including its annexes, shall not apply to Liechtenstein.

<sup>2</sup> It is recalled that references to Party/Parties in Sections 2.1 (General Provisions on Trade in Goods) to 2.4 (Customs and Trade Facilitation) include paragraph 1(c) of Article 1.2 (Territorial Application) of Chapter 1 (General Provisions).

- (ii) for the Bailiwick of Jersey: the Jersey Customs & Immigration Service;
- (iii) for the Bailiwick of Guernsey: Guernsey Customs & Excise;
- (iv) for the Isle of Man: the Customs and Excise Division, Isle of Man Treasury;
- (v) for Norway: the Norwegian Customs Administration; and
- (vi) for Iceland: Iceland Revenue and Customs.

The customs authorities referred to above shall be responsible for the application and implementation of this Section and its Annexes, as well as Section 2.4 (Customs and Trade Facilitation) and its Annex, insofar as they apply to them, in their respective territories. References to “customs authority” in those provisions shall be read accordingly.

- (c) “customs duty” includes any duty, tax or charge of equivalent effect imposed on or in connection with the importation or exportation of goods, including any form of surtax or surcharge in connection with such importation or exportation, but does not include:
  - (i) a charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;
  - (ii) a measure applied in accordance with the provisions of Articles VI or XIX of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement) or the Agreement on Safeguards (Safeguards Agreement), or a measure imposed in accordance with Article 22 of the Dispute Settlement Understanding; and
  - (iii) a fee or other charge imposed consistently with Article VIII of GATT 1994.
- (d) “export licensing procedures” means administrative procedures, howsoever called in each Party’s procedures or referred to by each Party’s customs authority, requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for exportation;

- (e) “good of a Party” means a domestic good as this is understood under GATT 1994 or such goods as the Parties may decide, and includes originating goods;
- (f) “Harmonized System” means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization (WCO);
- (g) “Import Licensing Agreement” means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;
- (h) “import licensing procedure” means an administrative procedure, howsoever called in each Party’s procedures or referred to by each Party’s customs authority, requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for importation;
- (i) “originating” has the meaning set out in Annex I on Rules of Origin;
- (j) “remanufactured good” means a good that:
  - (i) is entirely or partially comprised of parts obtained from goods that have been used;
  - (ii) has similar life expectancy and performance compared to the equivalent good when new; and
  - (iii) is given a similar warranty to the equivalent good when new;
- (k) “repair” means any processing operation undertaken on a good with the aim of remedying operating defects or material damage and substantially re-establishing the good to its original function or of ensuring compliance with technical requirements for its use. Repair of goods includes restoration and maintenance but does not include an operation or process that:
  - (i) destroys the essential characteristics of a good, or creates a new or commercially different good;
  - (ii) transforms an unfinished good into a finished good; or
  - (iii) is used to improve or upgrade the technical performance of goods;
- (l) “performance requirement” means a requirement that:
  - (i) a given quantity, value or percentage of goods be exported;

- (ii) goods of the Party granting an import licence be substituted for imported goods;
- (iii) a person benefiting from an import licence purchase other goods in the Party granting the import licence, or accord a preference to domestically produced goods;
- (iv) a person benefiting from an import licence produce goods in the Party granting the import licence, with a given quantity, value or percentage of domestic content; or
- (v) relates in whatever form to the volume or value of imports, to the volume or value of exports or to the amount of foreign exchange flows.

#### ARTICLE 2.4

##### ***National Treatment on Internal Taxation and Regulation***

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III (National Treatment on Internal Taxation and Regulation) of GATT 1994, including its interpretive notes, and to this end Article III (National Treatment on Internal Taxation and Regulation) of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### ARTICLE 2.5

##### ***Classification of Goods***

For the purposes of this Agreement, the classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System.

#### ARTICLE 2.6

##### ***Customs Duties***

1. Except as otherwise provided for in this Agreement, each Party shall eliminate all customs duties on originating goods of each other Party which are classified within Chapters 25 to 97 of the Harmonized System, with the exception of those goods (the "Scheduled Goods above HS Chapter 24") listed in the tariff elimination schedule, in Annex II, III, IV or V, that applies to imports into that Party of originating goods of the relevant exporting Party.

2. Except as otherwise provided for in this Agreement, each Party shall reduce or eliminate, in accordance with the tariff elimination schedules in Annexes II, III, IV and V, the customs duties on originating goods of each other Party which are classified within Chapters 1 to 24 of the Harmonized System, and the customs duties on originating goods of each other Party which are Scheduled Goods above HS Chapter 24 as referred to in paragraph 1.
3. Where and for so long as a Party's applied Most-Favoured-Nation (MFN) customs duty is lower than the rate required pursuant to paragraph 1 or 2 above, the customs duty rate to be applied pursuant to this Agreement to originating goods of another Party shall be calculated as equal to the importing Party's applied MFN customs duty.
4. A Party may at any time unilaterally accelerate the elimination of customs duties set out in the tariff elimination schedule or schedules, listed in Annexes II, III, IV and/or V, setting out commitments of that Party. For greater certainty, for goods within scope of paragraph 2, a Party may raise a customs duty to the level for a specific year as set out in the tariff elimination schedule or schedules, listed in Annexes II, III, IV and/or V, setting out commitments of that Party following a unilateral reduction as set out in this paragraph.

#### ARTICLE 2.7

##### ***Export Duties, Taxes and Other Charges***

No Party shall adopt or maintain any duty, tax, fees or other charges of any kind imposed on the export of goods to another Party, unless the duty, tax, fee or other charge is also applied to like goods destined for domestic consumption. For the purpose of this Article, fees and other charges of any kind shall not include fees or other charges imposed in accordance with Article 2.8 (Fees and Charges).

#### ARTICLE 2.8

##### ***Fees and Charges***

1. Each Party shall ensure, in accordance with Article VIII (Fees and Formalities Connected with Importation and Exportation) of GATT 1994 and its interpretative notes, that all fees and other charges within the scope of GATT Article VIII:1(a) of GATT 1994, imposed by that Party on, or in connection with, importation or exportation, including tasks provided under Article 2.57 (Advance Rulings) of Section 2.4 (Customs and Trade Facilitation), are limited to the amount of the approximate cost of services rendered by that Party to the concerned importer or exporter, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.



2. The fees and charges referred to in paragraph 1 shall not be calculated on an *ad valorem* basis.
3. Each Party shall publish information on fees and charges on the internet, as far as practicable in English. Such information shall include the service provided, the responsible authority, the fees and charges that will be applied and how they are calculated, as well as when and how payment has to be made.
4. Upon request, the customs authorities or other competent authorities of a Party shall provide information on fees and charges applicable to imports, exports or transit of goods, including the methods of calculation.
5. No Party shall require consular transactions, including related fees and other charges, in connection with the importation of any good of another Party.

#### ARTICLE 2.9

##### ***Administration and Implementation of TRQs***

1. The Parties agree that the administration of tariff rate quotas (TRQs) under this Agreement should be as conducive to trade as possible and, in particular, that it should facilitate regular imports and enable fill rates to be maximised.
2. A Party that intends to make any change in its quota administration method for any TRQ accorded to another Party under this Agreement shall notify the other Parties at least 3 months in advance of the effective date of the change.
3. The Parties shall exchange at regular intervals information on traded products, TRQ management, price quotations and any useful information concerning their respective domestic markets and the implementation of TRQs.
4. Consultations shall be held at the request of any Party on any question relating to the implementation of the TRQs under this Agreement. If difficulties with implementation arise, such consultations shall be held promptly, with a view to adopting appropriate corrective measures.

#### ARTICLE 2.10

##### ***Temporary Admission of Goods***

1. Each Party shall grant temporary admission with total conditional relief from import duties, as provided for in its law, for the following goods, regardless of their origin:

- (a) goods intended for display or use at exhibitions, fairs, meetings, demonstrations or similar events;
  - (b) professional equipment, including equipment for the press or for sound or television broadcasting, software, cinematographic equipment, and any ancillary apparatus or accessories for the equipment mentioned above that is necessary for carrying out the business activity, trade or profession of a person visiting the Party to perform a specified task;
  - (c) containers, commercial samples, advertising films and recordings and other goods imported in connection with a commercial operation;
  - (d) goods imported for sports purposes;
  - (e) goods intended for humanitarian purposes; and
  - (f) animals intended for specific purposes.
2. Each Party may require that the goods benefiting from temporary admission in accordance with paragraph 1:
- (a) are intended for re-exportation without having undergone any change except normal depreciation due to the use made of them;
  - (b) are used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession or sport of that person of another Party;
  - (c) are not sold or leased while in that Party;
  - (d) are accompanied by a security, releasable on exportation of the goods, if requested by the importing Party, in an amount no greater than the charges that would otherwise be owed on entry or final importation;
  - (e) can be identified when imported and exported;
  - (f) are re-exported within a specified period reasonably related to the purpose of the temporary admission; and
  - (g) are admitted in no greater quantity than is reasonable for their intended use.
3. Each Party shall permit goods temporarily admitted under this Article to be re-exported through a customs port or office other than through which they were admitted.
4. Each Party shall provide that the importer or other person responsible for goods admitted under this Article shall not be liable for failure to export the goods within the period fixed for temporary admission, including any lawful extension, on presentation of satisfactory proof to the importing

Party that the goods were totally destroyed in accordance with each Party's customs law.

#### ARTICLE 2.11

##### ***Inward and Outward Processing***

1. Each Party shall allow temporary importation and exportation for inward processing and outward processing in accordance with international standards.
2. For the purposes of this Article:
  - (a) "inward processing" means customs procedures under which certain goods can be brought into a customs territory conditionally relieved from payment of customs duties. Such goods must be intended for re-exportation within a specified period after having undergone manufacturing, processing or repair; and
  - (b) "outward processing" means customs procedures under which certain goods, which are in free circulation in a customs territory, may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from customs duties.

#### ARTICLE 2.12

##### ***Import and Export Restrictions***

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or the exportation or sale for export of any good destined for another Party, except in accordance with Article XI (General Elimination of Quantitative Restrictions) of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement *mutatis mutandis*. For greater certainty, the scope of this Article includes trade in remanufactured goods.
2. A Party shall not adopt or maintain export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings.
3. A Party shall not adopt or maintain import licensing conditioned on the fulfilment of a performance requirement, except as otherwise provided for in this Agreement.

## ARTICLE 2.13

### ***Import Licensing***

1. No Party shall adopt or maintain any import licensing procedures which are inconsistent with the Import Licensing Agreement (including its interpretative notes) and to that end Articles 1 to 3 of the Import Licensing Agreement and its interpretive notes pertaining to those Articles are incorporated into and made part of this Agreement *mutatis mutandis*.
2. The Parties shall not adopt or maintain import licensing procedures in order to implement a measure that is inconsistent with this Agreement.
3. A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to publish under Article 1(4)(a) of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.
4. A Party shall be deemed to be in compliance with paragraph 3 with respect to a new or modified import licensing procedure if it notifies that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement, including the information specified in Article 5(2) of the Import Licensing Agreement.
5. At the request of another Party, a Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Import Licensing Agreement, with regard to any import licensing procedures that it intends to adopt, or that it maintains, or to modifications to existing licensing procedures.
6. For greater certainty, nothing in this Article requires a Party to grant an import licence, or prevents a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes and import control arrangements.

## ARTICLE 2.14

### ***Export Licensing***

1. Each Party shall consider the application of other appropriate measures to achieve an administrative purpose before seeking to adopt or maintain export licensing procedures.
2. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure. Whenever practicable, such publication shall take place 45 days before the procedure or modification takes effect.

3. Within 60 days after the date of entry into force, or earlier provisional application, of this Agreement, each Party shall notify the other Parties of its existing export licensing procedures. Each Party shall notify to the other Parties any new export licensing procedures and any modifications to existing export licensing procedures, within 60 days of their publication. These notifications shall include references to the source(s) where the information required in paragraph 4 is published.
4. Each Party shall ensure that it includes in the publications it has notified under paragraph 3:
  - (a) the texts of its export licensing procedures, or any modifications it makes to those procedures;
  - (b) a description of the goods subject to the export licensing procedure;
  - (c) for each export licensing procedure, a description of:
    - (i) the process for applying for a licence; and
    - (ii) any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party;
  - (d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;
  - (e) the administrative body or bodies to which an application for a licence or other relevant documentation must be submitted;
  - (f) a description of or a citation to a publication reproducing in full any measure or measures that the export licensing procedure is designed to implement;
  - (g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;
  - (h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity and, if practicable, value of the quota and the opening and closing dates of the quota; and
  - (i) any exemptions or exceptions that replace the requirement to obtain an export licence, and how to request or use those exemptions or exceptions.
5. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from adopting, maintaining or implementing an export control regime and sanctions regime, or from

implementing its obligations or commitments under United Nations Security Council Resolutions and the Arms Trade Treaty, as well as multilateral non-proliferation regimes and export control arrangements including the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime.

#### ARTICLE 2.15

##### ***Goods for Repair or Alteration***

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party after that good has been temporarily exported for repair or alteration from that Party to another Party from which the good was exported, regardless of whether that repair or alteration has increased the value of the good or could have been performed in the Party from which the good was exported for repair or alteration.
2. Paragraph 1 does not apply to any materials used in the repair or alteration which were in a duty suspended state at the time of the repair or alteration unless a payment equivalent to the duty suspended has subsequently been made.
3. No Party shall apply customs duties to a good, regardless of origin, imported temporarily from the customs territory of another Party for repair or alteration.
4. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, which is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.
5. For the purposes of this Article, repair or alteration does not include an operation or process that:
  - (a) destroys a good's essential characteristics or creates a new or commercially different good;
  - (b) transforms an unfinished good into a finished good; or
  - (c) is used to improve or upgrade the technical performance of the good or changes the function of the good.
6. This Article shall not apply in cases where the good which is imported or exported for repair or alteration falls within Chapters 1-24 of the Harmonized System or the Scheduled Goods above HS Chapter 24, as referred to in paragraph 1 of Article 2.6 (Customs Duties).

#### ARTICLE 2.16

##### ***Remanufactured Goods***

1. Unless otherwise provided for in this Agreement, no Party shall accord to remanufactured goods of another Party any treatment that is less favourable than that it accords to like goods in new condition. Each Party may require that remanufactured goods are identified as such for distribution or sale.
2. If a Party adopts or maintains import and export prohibitions or restrictions on used goods on the basis that they are used goods, it shall not apply those measures to remanufactured goods.

#### ARTICLE 2.17

##### ***Data Sharing on Preference Utilisation***

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics starting one year after the entry into force of this Agreement.
2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of each other Party benefitting from preferential duty treatment under this Agreement and those that received non-preferential treatment.

#### ARTICLE 2.18

##### ***Review Clause***

1. In the interests of supporting their trade in agricultural and fisheries products, the Parties shall endeavour to find appropriate solutions to any difficulties in their trade in agricultural and fisheries products.
2. On the request of a Party, the Parties agree to consult on further liberalisation of trade between them in agricultural and fisheries products, including by way of a review of the conditions of trade in agricultural and fisheries products every five years.
3. In light of these reviews and of the Parties' respective agricultural and fisheries policies, the Parties will meet to discuss reducing any type of obstacles to trade in the agricultural and fisheries sector, on a balanced and mutually beneficial basis.
4. For the purpose of this Article, "agricultural and fisheries products" means all goods within Chapters 1 to 24 of the Harmonized System, and also the

Scheduled Goods above HS Chapter 24, as referred to in paragraph 1 of Article 2.6 (Customs Duties).

#### ARTICLE 2.19

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

1. The Parties hereby establish a Sub-Committee on Trade in Goods (referred to in this Article as the “Sub-Committee”).
2. The Sub-Committee shall comprise government representatives of each Party. Each Party shall ensure that its representatives in the Sub-Committee have the appropriate expertise with respect to the issues under discussion.
3. Meetings of the Sub-Committee shall be chaired jointly by either Norway or Iceland on the one side and the United Kingdom on the other side and shall take decisions and make recommendations by consensus.
4. The Parties shall agree on the meeting schedule and agenda. Meetings may take place in person or by any means of communication agreed by the Parties.
5. The Sub-Committee shall meet at the request of any Party, and may consider any matter arising under this Section and under Section 2.4 (Customs and Trade Facilitation) and the Annexes on Rules of Origin and Mutual Administrative Assistance in Customs Matters, and Sub-Section 7.2.4 (Geographical Indications and Traditional Terms) of Chapter 7 (Intellectual Property). Its functions shall include, amongst other things:
  - (a) promoting trade in goods between the Parties and considering concerns that may arise in trade in goods between the Parties;
  - (b) addressing barriers to trade in goods between the Parties, including through reviews according to Article 2.18 (Review Clause), and further consultation on the functioning of the trade regimes for processed agricultural products, and addressing barriers related to the application of non-tariff measures;
  - (c) monitoring and reviewing the implementation of commitments and ensuring the proper functioning of this Section and of Section 2.4 (Customs and Trade Facilitation) and the Annexes on Rules of Origin and Mutual Administrative Assistance in Customs Matters, including identifying areas for improvement;
  - (d) providing a forum for the Parties to exchange information, discuss best practices and share implementation experience;
  - (e) considering a request made by a Party concerning the amendment of Annexes XXII, XXIII and XXIV on Geographical Indications and



making recommendations to the Joint Committee pursuant to Articles 7.40 (Amending the Annexes on Geographical Indications) and 7.41 (Processing of Specific Geographical Indications) of Chapter 7 (Intellectual Property);

- (f) enhancing international cooperation and coordination in relevant multilateral fora on trade facilitation and on matters of common interest, including tariff classification, customs valuation and origin, with a view to establishing, if possible, common positions, and reviewing relevant international initiatives in order to identify further areas where joint action could contribute to their common objectives;
- (g) reviewing and addressing all issues arising from the implementation and operation of the World Trade Organization (WTO) Agreement on Trade Facilitation;
- (h) reviewing the rules set out in Annex I (Rules of Origin) and its Appendices, *inter alia* in the light of international developments, including the future amendments to the Harmonized System to ensure that the obligations of the Parties are not substantively affected;
- (i) formulating resolutions, recommendations, explanatory notes or opinions regarding actions or measures which it considers necessary for the attainment of the objectives and effective functioning of this Section, Section 2.4 (Customs and Trade Facilitation), and the Annex I (Rules of Origin) and Annex XV (Mutual Administrative Assistance in Customs Matters);
- (j) where appropriate, referring matters considered by the Sub-Committee on Trade in Goods to the Joint Committee or another committee established under this Agreement;
- (k) undertaking any other work that the Joint Committee may assign to it; and
- (l) establishing and dissolving working groups as necessary on matters related to this Section, Section 2.4 (Customs and Trade Facilitation) and Annex I (Rules of Origin).

#### ARTICLE 2.20

##### ***Annexes***

1. The rules of origin are set out in Annex I and its Appendices.
2. The Schedule of Tariff Commitments on Goods – Commitments of Iceland on Goods Originating in the United Kingdom, is contained in Annex II.

3. The Schedule of Tariff Commitments on Goods – Commitments of Norway on Goods Originating in the United Kingdom, is contained in Annex III.
4. The Schedule of Tariff Commitments on Goods – Commitments of the United Kingdom on Goods Originating in Iceland, is contained in Annex IV.
5. The Schedule of Tariff Commitments on Goods – Commitments of the United Kingdom on Goods Originating in Norway, is contained in Annex V.
6. Specific rules on the calculation of quota volumes after entry into force are set out in Annex VI.
7. The transit arrangement for the transit of fish and fishery products taken by United Kingdom fishing vessels are set out in the bilateral Annex VII.

## **SECTION 2.2**

### **TECHNICAL BARRIERS TO TRADE**

#### ARTICLE 2.21

##### *Objective*

The objective of this Section is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade.

#### ARTICLE 2.22

##### *Scope*

1. This Section applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, which may affect trade in goods between the Parties.
2. This Section does not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
  - (b) sanitary and phytosanitary (SPS) measures that fall within scope of Section 2.3 (Sanitary and Phytosanitary Measures).
3. The Annexes to this Section apply, in respect of products within their scope, in addition to this Section. Any provision in an Annex to this Section that an international standard or body or organisation is to be considered or recognised as relevant, does not prevent a standard developed by any other body or organisation from being considered to be a relevant international standard pursuant to paragraphs 4 and 5 of Article 2.24 (Technical Regulations).
4. The Parties acknowledge that Iceland and Norway, following their obligations under the Agreement on the European Economic Area, signed in Porto on 2 May 1992 (EEA Agreement), adopt European Union (EU) technical regulations and conformity assessment procedures into their national legislations. Such adopted EU measures are referred to here and in paragraph 5 as harmonised technical regulations and conformity assessment procedures. Whereas non-harmonised technical regulations and conformity assessment procedures are prepared and reviewed at national level, the substance of harmonised technical regulations and conformity assessment procedures are prepared and reviewed by the EU.

5. With respect to harmonised technical regulations and conformity assessment procedures, it is understood that, where relevant, obligations under Articles 2.24 (Technical Regulations), 2.26 (Conformity Assessment) and 2.27 (Transparency) are considered fulfilled by Iceland and Norway when the European Union has fulfilled its identical commitments in accordance with the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed in London and Brussels on 30 December 2020 (UK-EU TCA), except where Iceland and Norway have a discretion in how any EU technical regulations and conformity assessment procedures are to be implemented in their national law.

#### ARTICLE 2.23

##### ***Relationship with the TBT Agreement***

1. Articles 2 to 9 of, and Annexes 1 and 3 to, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) are incorporated into and made part of this Agreement *mutatis mutandis*.
2. Terms referred to in this Section and in the Annexes to this Section shall have the same meaning as they have in the TBT Agreement.

#### ARTICLE 2.24

##### ***Technical Regulations***

1. Each Party shall carry out impact assessments of planned technical regulations in accordance with its respective rules and procedures. The rules and procedures referred to in this paragraph and in paragraph 8 may provide for exceptions.
2. Each Party shall assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.
3. Each Party shall use relevant international standards as a basis for its technical regulations except when it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.
4. International standards developed by the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunication Union (ITU) and Codex Alimentarius Commission (Codex) shall be the relevant international standards within the

meaning of Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement.

5. A standard developed by other international organisations may also be considered a relevant international standard within the meaning of Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement, provided that:
  - (a) it has been developed by a standardising body which seeks to establish consensus either:
    - (i) among national delegations of the participating WTO Members representing all the national standardising bodies in their territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardisation activity relates; or
    - (ii) among governmental bodies of participating WTO Members; and
  - (b) it has been developed in accordance with the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement.<sup>3</sup>
6. Where a Party does not use international standards as a basis for a technical regulation, on request of another Party, it shall identify any substantial deviation from the relevant international standard, explain the reasons why such standards were judged inappropriate or ineffective for the objective pursued, and provide the scientific or technical evidence on which that assessment was based.
7. Each Party shall review its technical regulations in accordance with its respective rules and procedures to increase the convergence of those technical regulations with relevant international standards, taking into account, *inter alia*, any new developments in the relevant international standards or any changes in the circumstances that have given rise to divergence from any relevant international standards.
8. In accordance with its respective rules and procedures and without prejudice to Chapter 11 (Good Regulatory Practices and Regulatory Cooperation), when developing a major technical regulation which may have a significant effect on trade, each Party shall ensure that procedures exist that allow persons to express their opinion in a public consultation, except where urgent problems of safety, health, environment or national security arise or threaten to arise. Each Party shall allow persons of another Party to

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<sup>3</sup> G/TBT/9, 13 November 2000, Annex 4.

participate in such consultations on terms that are no less favourable than those accorded to its own nationals, and shall make the results of those consultations public.

## ARTICLE 2.25

### *Standards*

1. Each Party shall encourage the standardising bodies established in that Party, as well as the regional standardising bodies of which a Party or the standardising bodies established in the Party are members:
  - (a) to participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;
  - (b) to use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for example because of an insufficient level of protection, fundamental climatic or geographical factors or fundamental technological problems;
  - (c) to avoid duplications of, or overlaps with, the work of international standardising bodies;
  - (d) to review national and regional standards that are not based on relevant international standards at regular intervals, with a view to increasing the convergence of those standards with relevant international standards;
  - (e) to cooperate with the relevant standardising bodies of another Party in international standardisation activities, including through cooperation in the international standardising bodies or at regional level;
  - (f) to foster bilateral cooperation with the standardising bodies of another Party; and
  - (g) to exchange information between standardising bodies.
2. The Parties shall exchange information on:
  - (a) their respective use of standards in support of technical regulations; and
  - (b) their respective standardisation processes, and the extent to which they use international, regional or sub-regional standards as a basis for their national standards.
3. Where standards are rendered mandatory in a draft technical regulation or conformity assessment procedure, through incorporation or reference, the

transparency obligations set out in Article 2.27 (Transparency) of this Agreement and in Articles 2 or 5 of the TBT Agreement shall apply.

#### ARTICLE 2.26

##### ***Conformity Assessment***

1. Article 2.24 (Technical Regulations) concerning the preparation, adoption and application of technical regulations shall also apply to conformity assessment procedures, *mutatis mutandis*.
2. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:
  - (a) select conformity assessment procedures that are proportionate to the risks involved, as determined on the basis of a risk-assessment;
  - (b) consider as proof of compliance with technical regulations the use of a supplier's declaration of conformity, i.e. a declaration of conformity issued by the manufacturer on the sole responsibility of the manufacturer without a mandatory third-party assessment, as assurance of conformity among the options for showing compliance with technical regulations; and
  - (c) where requested by another Party, provide information on the criteria used to select the conformity assessment procedures for specific products.
3. Where a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation and it has not reserved this task to a government authority as specified in paragraph 4, it shall:
  - (a) use accreditation, as appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies. Without prejudice to its right to establish requirements for conformity assessment bodies, each Party recognises the valuable role that accreditation operated with authority derived from government and on a non-commercial basis can play in the qualification of conformity assessment bodies;
  - (b) use relevant international standards for accreditation and conformity assessment;
  - (c) encourage accreditation bodies and conformity assessment bodies located in that Party to join any relevant functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

- (d) if two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing a product on the market, ensure that economic operators have a choice amongst the conformity assessment bodies designated by the authorities of a Party for a particular product or set of products;
  - (e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;
  - (f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in another Party, and may require subcontractors to meet the same requirements the conformity assessment body must meet to perform such testing or inspections itself; and
  - (g) publish on a single website a list of the bodies that it has designated to perform such conformity assessment and the relevant information on the scope of designation of each such body.
- 4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by its specified government authorities. If a Party requires that conformity assessment is performed by its specified government authorities, that Party shall:
  - (a) limit the conformity assessment fees to the approximate cost of the services rendered and, at the request of an applicant for conformity assessment, explain how any fees it imposes for that conformity assessment are limited to the approximate cost of services rendered; and
  - (b) make publicly available the conformity assessment fees.
- 5. Notwithstanding paragraphs 2 to 4, each Party shall accept a supplier's declaration of conformity as proof of compliance with its technical regulations in those product areas where it does so on the date of entry into force of this Agreement.
- 6. Each Party shall publish and maintain a list of the product areas referred to in paragraph 5 for information purposes, together with the references to the applicable technical regulations.
- 7. Notwithstanding paragraph 5, each Party may introduce requirements for the mandatory third party testing or certification of the product areas referred to in that paragraph, provided that such requirements are justified on grounds of legitimate objectives and are proportionate to the purpose of giving the importing Party adequate confidence that products conform with



the applicable technical regulations or standards, taking account of the risks that non-conformity would create.

8. A Party proposing to introduce the conformity assessment procedures referred to in paragraph 7 shall notify the other Parties at an early stage and shall take the comments of the other Parties into account in devising any such conformity assessment procedures.

## ARTICLE 2.27

### *Transparency*

1. Except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, each Party shall allow the other Parties to provide written comments on notified proposed technical regulations and conformity assessment procedures within a period of at least 60 days from the date of the transmission of the notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend that comment period.
2. Each Party shall provide the electronic version of the full notified text together with the notification. In the event that the notified text is not in one of the official WTO languages, the notifying Party shall provide a detailed and comprehensive description of the content of the measure in the WTO notification format.
3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from another Party, it shall:
  - (a) if requested by the Party concerned, discuss the written comments with the participation of its competent regulatory authority, at a time when they can be taken into account; and
  - (b) reply in writing to the comments no later than the date of publication of the technical regulation or conformity assessment procedure.
4. Each Party shall endeavour to publish on a website its responses to the comments it receives following the notification referred to in paragraph 1 no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.
5. Each Party shall, where requested by another Party, provide information regarding the objectives of, legal basis for and rationale for, any technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are published on a website that is accessible free of charge.
7. Each Party shall provide information on the adoption and the entry into force of technical regulations or conformity assessment procedures and the adopted final texts through an addendum to the original notification to the WTO.
8. Each Party shall allow a reasonable interval between the publication of technical regulations and their entry into force, in order to allow time for the economic operators of the other Parties to adapt.
9. A Party shall give positive consideration to a reasonable request from another Party received prior to the end of the comment period set out in paragraph 1 to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.
10. Each Party shall ensure that the enquiry point established in accordance with Article 10 of the TBT Agreement provides information and answers in one of the official WTO languages to reasonable enquiries from the other Parties or from interested persons of the other Parties regarding adopted technical regulations and conformity assessment procedures.

#### ARTICLE 2.28

##### ***Marking and Labelling***

1. The technical regulations of a Party may include or exclusively address mandatory marking or labelling requirements. In such cases, the principles of Article 2.2 of the TBT Agreement apply to these technical regulations.
2. Where a Party requires mandatory marking or labelling of products, all of the following conditions shall apply:
  - (a) it shall only require information which is relevant for consumers or users of the product or information that indicates that the product conforms to the mandatory technical requirements;
  - (b) it shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of legitimate objectives;
  - (c) where the Party requires the use of a unique identification number by economic operators, it shall issue such a number to the economic

operators of another Party without undue delay and on a non-discriminatory basis;

- (d) unless the information listed in points (i), (ii) or (iii) would be misleading, contradictory or confusing in relation to the information that the importing Party requires with respect to the goods, the importing Party shall permit:
  - (i) information in other languages in addition to the language required in the importing Party of the goods;
  - (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and
  - (iii) additional information to that required in the importing Party of the goods;
- (e) it shall accept that labelling, including supplementary labelling or corrections to labelling, take place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required for reasons of public health or safety or required for products – other than food, feed and seeds – consisting of or containing genetically modified organisms;
- (f) unless it considers that legitimate objectives may be undermined, it shall endeavour to accept the use of non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring labels or marking to be physically attached to the product; and
- (g) paragraph 2 does not apply for tobacco products, nicotine products and related products.

#### ARTICLE 2.29

#### ***Cooperation on Market Surveillance and Non-Food Product Safety and Compliance***

1. The Parties recognise the importance of cooperation on market surveillance, compliance and the safety of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.
2. To guarantee the independent and impartial functioning of market surveillance, the Parties shall ensure:
  - (a) the separation of market surveillance functions from conformity assessment functions; and

- (b) the absence of any interests that would affect the impartiality of market surveillance authorities in the performance of their control or supervision of economic operators.
- 3. The Parties shall cooperate and exchange information in the area of non-food product safety and compliance, which may include in particular the following:
  - (a) market surveillance and enforcement activities and measures;
  - (b) risk assessment methods and product testing;
  - (c) coordinated product recalls or other similar actions;
  - (d) scientific, technical and regulatory matters in order to improve non-food product safety and compliance;
  - (e) emerging issues of significant health and safety relevance;
  - (f) standardisation-related activities;
  - (g) exchanges of officials.
- 4. The Parties may establish arrangements on the regular exchange of information, including the exchange of information by electronic means, regarding measures taken on non-compliant non-food products.
- 5. Each Party shall use the information obtained pursuant to paragraphs 3 and 4 for the sole purpose of protecting consumers, health, safety or the environment.
- 6. Each Party shall treat the information obtained pursuant to paragraphs 3 and 4 as confidential. This provision shall not prevent disclosure of such information which may be required under national law.
- 7. The arrangements referred to in paragraph 4 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.
- 8. For the purposes of this Article, “market surveillance” means activities conducted and measures taken by market surveillance and enforcement authorities, including activities conducted and measures taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address safety of products and their compliance with the requirements set out in its laws and regulations.
- 9. Each Party shall ensure that any measure taken by its market surveillance or enforcement authorities to withdraw or recall from its market or to prohibit or restrict the making available on its market of a product imported from another Party, for reasons related to non-compliance with the applicable

legislation, is proportionate, states the exact grounds on which the measure is based and is communicated without delay to the relevant economic operator.

#### ARTICLE 2.30

##### ***Technical Discussions***

1. If a Party considers that a draft or proposed technical regulation or conformity assessment procedure of another Party might have a significant effect on trade between the Parties, it may request technical discussions on the matter. The request shall be made in writing to the Party concerned and shall identify:
  - (a) the measure at issue;
  - (b) the provisions of this Section or of an Annex to this Section to which the concerns relate; and
  - (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.
2. A Party shall deliver its request to the contact point of the Party concerned designated pursuant to Article 2.32 (Contact Points).
3. At the request of a Party, the Parties shall meet to discuss the concerns raised in the request, in person or via videoconference or teleconference, within 60 days of the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

#### ARTICLE 2.31

##### ***Cooperation***

1. The Parties shall cooperate in the field of technical regulations, standards and conformity assessment procedures, where it is in their mutual interest, and without prejudice to the autonomy of their own respective decision-making and legal orders. The Sub-Committee on Technical Barriers to Trade may exchange views with respect to the cooperation activities carried out under this Article or the Annexes to this Section.
2. For the purposes of paragraph 1, the Parties shall seek to identify, develop and promote cooperation activities of mutual interest. These activities may in particular relate to:

- (a) the exchange of information, experience and data related to technical regulations, standards and conformity assessment procedures;
- (b) ensuring efficient interaction and cooperation of their respective regulatory authorities at international, regional or national level;
- (c) exchanging information, to the extent possible, about international agreements and arrangements regarding technical barriers to trade to which one or all Parties are party; and
- (d) establishment of or participation in trade facilitating initiatives.

#### ARTICLE 2.32

##### ***Contact Points***

1. Upon the entry into force of this Agreement, each Party shall designate a contact point for the implementation of this Section and shall notify the other Parties of the contact details for the contact point, including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.
2. The contact point shall provide any information or explanation requested by the contact point of the other Parties in relation to the implementation of this Section within a reasonable period of time and, if possible, within 60 days of the date of receipt of the request.

#### ARTICLE 2.33

##### ***Sub-Committee on Technical Barriers to Trade***

1. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade which shall supervise the implementation and operation of this Section and the Annexes to it and shall promptly clarify and address, where possible, any issue raised by a Party relating to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Section or the TBT Agreement.
2. The Sub-Committee on Technical Barriers to Trade shall without undue delay review this Section and related annexes in light of relevant developments under the UK-EU TCA. In such reviews, the Parties shall endeavour to agree on recommendations for alignment of this Section with the Technical Barriers to Trade Chapter and related annexes under the TCA. Such recommendations for amendments shall be submitted to the Joint Committee.

3. The Sub-Committee on Technical Barriers to Trade may establish, if necessary, to achieve the objectives of this Section, ad hoc technical working groups to deal with specific issues or sectors.
4. The Sub-Committee on Technical Barriers to Trade shall meet on request of a Party, and no later than five years after the entry into force of this Agreement, and thereafter on request by a Party.

**SECTION 2.3**  
**SANITARY AND PHYTOSANITARY MEASURES**

**ARTICLE 2.34**

***Objectives***

The objectives of this Section are to:

- (a) protect human, animal and plant life or health, and the environment while facilitating trade;
- (b) further the implementation of the SPS Agreement;
- (c) ensure that the Parties' SPS measures do not create unjustified barriers to trade;
- (d) promote greater transparency and understanding on the application of each Party's SPS measures;
- (e) enhance cooperation between the Parties on animal welfare, the promotion of sustainable food systems, and in the fight against antimicrobial resistance;
- (f) enhance cooperation in international standard-setting bodies to develop international standards, guidelines and recommendations on animal health, food safety and plant health, including international plant commodity standards; and
- (g) promote the implementation by each Party of international standards, guidelines and recommendations.

**ARTICLE 2.35**

***Scope***

1. This Section applies to SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. This Section also applies to cooperation between the Parties on animal welfare, antimicrobial resistance and sustainable food systems.



## ARTICLE 2.36

### *Definitions*

1. For the purposes of this Section and Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters), the following definitions apply:
  - (a) the definitions in Annex A to the SPS Agreement;
  - (b) the definitions adopted under the auspices of the Codex Alimentarius Commission (Codex);
  - (c) the definitions adopted under the auspices of the World Organisation for Animal Health (OIE); and
  - (d) the definitions adopted under the auspices of the International Plant Protection Convention (IPPC).
2. For the purposes of this Section and Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters):
  - (a) “import conditions” means any SPS measures that are required to be fulfilled for the import of products;
  - (b) “sanitary or phytosanitary measure” means any measure as defined in paragraph 1 of Annex A to the SPS Agreement falling within the scope of this Agreement;
  - (c) “SPS Sub-Committee” means the Sub-Committee on Sanitary and Phytosanitary Measures established pursuant to Article 2.50 (Sub-Committee on Sanitary and Phytosanitary Measures); and
  - (d) “SPS Agreement” means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement.
3. The SPS Sub-Committee may make a recommendation to the Joint Committee established under Article 15.1 (Joint Committee) of Chapter 15 (Institutional Provisions) to adopt other definitions for the purposes of this Section, taking into consideration the glossaries and definitions of the relevant international organisations, such as the Codex, OIE and IPPC.
4. The definitions under the SPS Agreement prevail to the extent that there is an inconsistency between the definitions adopted under this Agreement or adopted under the auspices of the Codex, OIE, or IPPC and the definitions under the SPS Agreement. To the extent that there is an inconsistency between definitions adopted under this Agreement and the definitions set out in the Codex, OIE or IPPC, the definitions set out in the Codex, OIE or IPPC shall prevail.

## ARTICLE 2.37

### ***Rights and Obligations***

The Parties affirm their rights and obligations under the SPS Agreement. This includes the right to adopt measures in accordance with paragraph 7 of Article 5 of the SPS Agreement.

## ARTICLE 2.38

### ***General Principles***

1. Each Party shall apply SPS measures for achieving their appropriate level of protection that are based on risk assessments in accordance with relevant provisions, including Article 5 of the SPS Agreement.
2. A Party shall not use SPS measures to create unjustified barriers to trade.
3. Regarding trade-related SPS procedures and approvals established under this Section, each Party shall ensure that these procedures and approvals, and related SPS measures:
  - (a) are initiated and completed without undue delay;
  - (b) do not include unnecessary, scientifically and technically unjustified or unduly burdensome information requests that might delay access to another Party's market;
  - (c) are not applied in a manner which would constitute arbitrary or unjustifiable discrimination against another Party or parts of another Party where identical or similar SPS conditions exist; and
  - (d) are proportionate to the risks identified and not more trade restrictive than necessary to achieve the importing Party's appropriate level of protection.
4. A Party shall not use the procedures and approvals referred to in paragraph 3, or any requests for additional information, to delay access to their markets without scientific and technical justification.
5. Each Party shall ensure that any administrative procedure it requires concerning the import conditions on food safety, animal health or plant health is not more burdensome or trade restrictive than necessary to give the importing Party adequate confidence that these conditions are met. Each Party shall ensure that the negative effects on trade of any administrative procedures are kept to a minimum and that the clearance processes remain simple and expeditious while meeting the importing Party's conditions.

6. The importing Party shall not put in place any additional administrative system or procedure that unnecessarily hampers trade.

#### ARTICLE 2.39

##### ***Specific Provisions and Arrangements concerning Sanitary and Phytosanitary Matters***

Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters) contains specific provisions and arrangements concerning sanitary and phytosanitary matters.

#### ARTICLE 2.40

##### ***Minimum Standard of Treatment on Sanitary Measures***

1. This Article applies to each Party's sanitary measures if the United Kingdom and the EU enter into any agreement concerning sanitary measures which is in force between the United Kingdom and the European Union on or after 1 January 2021 (UK-EU Sanitary Agreement).
2. With respect to the sanitary matters provided for in Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters), each Party shall be afforded treatment no less favourable than that which is afforded to the United Kingdom and the European Union under the terms of any UK-EU Sanitary Agreement. At the request of a Party, the Parties shall hold consultations within the SPS Sub-Committee to consider the incorporation of relevant provisions of any UK-EU Sanitary Agreement into this Agreement in accordance with subparagraph 2(a) of Article 2.50 (Sub-Committee on Sanitary and Phytosanitary Measures). The terms and basis of any such incorporation shall be agreed between the Parties and subject to their respective domestic legal requirements.
3. This Article shall not apply to Iceland in respect of sanitary measures in relation to trade in live animals, other than fish and aquaculture animals, and animal products such as ova, semen and embryos.

#### ARTICLE 2.41

##### ***Cooperation on Sanitary Matters***

Without prejudice to Article 2.40 (Minimum Standard of Treatment on Sanitary Measures), the Parties agree to cooperate on the sanitary matters to be set out in Annex XIV (Cooperation on Sanitary Matters) in accordance with subparagraph 2(b) of Article 2.50 (Sub-Committee on Sanitary and Phytosanitary Measures). At the request of a Party, the Parties shall hold consultations within the

SPS Sub-Committee on the sanitary matters which are to be the subject of cooperation, and the nature and extent of such cooperation.

## ARTICLE 2.42

### *Transparency and Exchange of Information*

1. Each Party shall pursue transparency as regards SPS measures applicable to trade and shall for those purposes undertake the following actions:
  - (a) promptly communicate to the other Parties any changes to its SPS measures and approval procedures, including changes that may affect its capacity to fulfil the SPS import requirements of a Party for certain products;
  - (b) enhance mutual understanding of its SPS measures and their application;
  - (c) exchange information with the other Parties 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 minimising negative trade effects;
  - (d) upon request of a Party, communicate the conditions that apply for the import of specific products without undue delay;
  - (e) upon request of a Party, communicate the state of play of the procedure for the authorisation of specific products without undue delay;
  - (f) communicate to the other Parties any significant change to the structure or organisation of a Party's competent authority;
  - (g) on request, communicate the results of a Party's official control and a report that concerns the results of the control carried out;
  - (h) on request, communicate the results of an import check provided for in case of a rejected or a non-compliant consignment; and
  - (i) on request, communicate, without undue delay, a risk assessment or scientific opinion produced by a Party that is relevant to this Section.
2. Where a Party has made available the information in paragraph 1 via notification to the WTO's Central Registry of Notifications or to the relevant international standard-setting body, in accordance with its relevant rules, the requirements in paragraph 1, as they apply to that information, are fulfilled.

## ARTICLE 2.43

### ***Recognition of Plant Pest Status and Regional Conditions***

1. The Parties shall recognise 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 the IPPC International Standards for Phytosanitary Measures (ISPMs), which the Parties agree to apply in the trade between them, in accordance with the SPS Agreement, including the Guidelines to further the practical implementation of Article 6 of the SPS Agreement (WTO/SPS Committee Decision G/SPS/48), and the relevant ISPMs.
2. When determining Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites and areas of low pest prevalence, whether for the first time or after an outbreak of a plant pest, the importing Party shall base its own determination of the plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement and ISPMs, and take into consideration the determination made by the exporting Party.
3. The exporting Party shall communicate Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites and areas of low pest prevalence to the other Parties and, upon request, provide an explanation and supporting data as provided for in the relevant ISPMs or otherwise deemed appropriate.
4. Without undue delay following the receipt of the information referred to in paragraph 2, the importing Party may raise an explicit objection, request additional information or consultation, or require verification. The importing Party shall assess any additional information without undue delay following its receipt.
5. Unless the importing Party raises an objection, requests additional information or consultation, or requires verification without undue delay following the receipt of the information referred to in paragraph 2, the recognition of the determination of the Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites and/or areas of low pest prevalence of the exporting Party shall be understood as accepted by the importing Party.
6. After finalisation of the procedure established in this Article, if the importing Party takes the decision to approve the requested Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites and/or areas of low pest prevalence then it shall allow trade on that basis, without undue delay.
7. In the event that the importing Party does not approve the requested Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites and/or areas of low pest prevalence, it shall notify its decision to the

exporting Party and explain the reasons for the rejection and, upon request, hold consultations.

8. If consultations are requested by the importing Party or the exporting Party, they shall be conducted in accordance with paragraph 2 of Article 2.44 (Notification and Consultation).
9. Any verification the importing Party may require shall be carried out taking into account the biology of the pest and the crop concerned.
10. The phytosanitary requirements of the importing Party shall be established taking into consideration the phytosanitary status in the exporting Party and, if required by the importing Party, the result of a Pest Risk Analysis (PRA). The PRA shall be carried out in accordance with the relevant ISPM. The risk analysis shall take into account available scientific and technical information.
11. 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, and areas of low pest prevalence.
12. The SPS Sub-Committee may define further details for the procedures set out in this Article, taking into account the SPS Agreement and IPPC guidelines, standards and recommendations.

## ARTICLE 2.44

### *Notification and Consultation*

1. A Party shall notify the other Parties without undue delay of:
  - (a) a significant change to pest or disease status;
  - (b) the emergence of a new animal disease;
  - (c) a finding of epidemiological importance with respect to an animal disease;
  - (d) a significant food safety issue identified by a Party;
  - (e) any additional measures beyond the basic requirements of their respective SPS measures taken to control or eradicate animal disease or protect human health, and any changes in preventive policies, including vaccination policies;
  - (f) on request, the results of a Party's official control and a report that concerns the results of the control carried out; and
  - (g) any significant changes to the functions of a system or database.

2. If a Party has a significant concern with respect to food safety, plant health, or animal health, or an SPS measure that another Party has proposed or implemented, that Party may request technical consultations with the other Party. The requested Party should respond to the request without undue delay. Each of the requesting Party and the requested Party shall endeavour to provide the information necessary to avoid a disruption to trade and, as the case may be, to reach a mutually acceptable solution.
3. Consultations referred to in paragraph 2 may be held via telephone conference, videoconference, or any other means of communication mutually agreed on by the Parties concerned.

#### ARTICLE 2.45

##### ***Multilateral International Fora***

The Parties agree to cooperate in the Codex, OIE and IPPC on the development of international standards, guidelines and recommendations in the areas under the scope of this Section.

#### ARTICLE 2.46

##### ***Implementation and Competent Authorities***

1. For the purposes of the implementation of this Section, each Party shall take all of the following into account:
  - (a) decisions of the WTO Committee on Sanitary and Phytosanitary Measures;
  - (b) the work of the Codex, OIE and IPPC;
  - (c) any knowledge and past experience it has of trading with the exporting Party; and
  - (d) information provided by the other Parties.
2. The Parties shall, without delay, provide each other with a description of the competent authorities of the Parties for the implementation of this Section. The Parties shall notify each other of any significant change to these competent authorities.
3. Each Party shall ensure that its competent authorities have the necessary resources to effectively implement this Section.

## ARTICLE 2.47

### *Cooperation on Antimicrobial Resistance*

1. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health.
2. The Parties recognise that the nature of the threat requires a transnational and “One Health and Global Action Plan” approach, acknowledging the interdependencies between animal health, human health, food safety, food security and the environment.
3. The Parties shall explore initiatives to promote the prudent and responsible use of antimicrobial agents in animal and crop production and the phasing out of the use of antimicrobial agents internationally as growth promoters.
4. The Parties shall cooperate in and follow existing and future codes, guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote the prudent and responsible use of antimicrobial agents in animal husbandry and veterinary practices and crop production, and, where appropriate, towards harmonisation of surveillance and data collection.
5. The Parties shall promote collaboration in all relevant multilateral fora, in particular in the OIE, the Food and Agriculture Organization of the United Nations and the Codex.
6. The Parties shall facilitate the exchange of information, expertise, data on antimicrobial resistance surveillance, and experiences in the field of combatting antimicrobial resistance, and identify common views, interests, priorities and policies in this area with the aim of implementing this Article. To this end, the Parties may establish a joint working group on combatting antimicrobial resistance which shall, as appropriate, share information with the SPS Sub-Committee. By agreement of the Parties, the working group created may invite experts for specific activities.

## ARTICLE 2.48

### *Cooperation on Animal Welfare*

1. The Parties recognise that animals are sentient beings. They also recognise the connection between improved welfare of animals and sustainable food production systems.
2. The Parties undertake to cooperate in international fora to promote the development of the best possible animal welfare practices and their implementation. In particular, the Parties shall cooperate to reinforce and



broaden the scope of the OIE animal welfare standards, as well as their implementation, with a focus on farmed animals.

3. The Parties shall strengthen their cooperation on research in the area of animal welfare to develop adequate and science-based animal welfare standards related to animal breeding and the treatment of animals on the farm, during transport and at slaughter.
4. The Parties shall facilitate the exchange of information, expertise, and experiences in the field of enhancing animal welfare, and identify common views, interests, priorities and policies in this area with the aim of implementing this Article. To this end, the Parties may establish a joint working group on animal welfare which shall, as appropriate, share information with the Sub-Committee on SPS. By agreement of the Parties, the working group created may invite experts for specific activities.

#### ARTICLE 2.49

##### ***Sustainable Food Systems***

Each Party shall encourage its food safety, animal and plant health services to cooperate with their counterparts in the other Parties with the aim of promoting sustainable food production methods and food systems.

#### ARTICLE 2.50

##### ***Sub-Committee on Sanitary and Phytosanitary Measures***

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures (SPS Sub-Committee), composed of regulatory and trade representatives of each Party responsible for SPS measures.
2. The functions of the SPS Sub-Committee include:
  - (a) to ensure through the consultations referred to in Article 2.40 (Minimum Standard of Treatment on Sanitary Measures) that Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters) affords the Parties no less favourable treatment than is afforded to the United Kingdom and the European Union pursuant to any UK-EU Sanitary Agreement. On the basis of the outcome of such consultations, the SPS Sub-Committee may make a recommendation to the Joint Committee established under Article 15.1 (Joint Committee) of Chapter 15 (Institutional Provisions) to adopt a decision to amend Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters).
  - (b) to facilitate consultations on the sanitary matters which are to be the subject of the cooperation envisaged under Article 2.41 (Cooperation

on Sanitary Matters) and the nature and extent of such cooperation. On the basis of the outcome of such consultations, the SPS Sub-Committee may make a recommendation to the Joint Committee to adopt a decision to amend Annex XIV (Cooperation on Sanitary Matters);

- (c) to establish appropriate points of contact for the purposes of Article 2.42 (Transparency and Exchange of Information) and Article 2.44 (Notification and Consultation);
- (d) to monitor the implementation of this Section, to consider any matter related to this Section and to examine all matters which may arise in relation to its implementation;
- (e) to provide direction for the identification, prioritisation, management and resolution of issues;
- (f) to address any request by a Party to modify an import check;
- (g) at least once a year, to review the Annexes to this Section, notably in the light of progress made under the consultations provided for under this Agreement. Following its review, the SPS Sub-Committee may make recommendations to the Joint Committee to adopt decisions to amend the annexes to this Section;
- (h) to monitor the implementation of a decision adopted by the Joint Committee pursuant to subparagraph (g), as well as the operation of measures introduced by that decision;
- (i) to provide a regular forum to exchange information that relates to each Party's regulatory system, including the scientific and risk assessment basis for an SPS measure;
- (j) to make recommendations to the Joint Committee to adopt decisions to add definitions as referred to in paragraph 3 of Article 2.36 (Definitions), and to define details for the procedures referred to in paragraph 12 of Article 2.43 (Recognition of Plant Pest Status and Regional Conditions) and in Part 4 of Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters); and
- (k) to establish other ways to support the explanations referred to in Part 4 of Annex XIII (Provisions and Arrangements Concerning Sanitary and Phytosanitary Matters).

3. The SPS Sub-Committee may, among other things:

- (a) identify opportunities for greater bilateral engagement, including enhanced relationships, which may include an exchange of officials;

- (b) discuss at an early stage a change to, or a proposed change to, an SPS measure being considered;
  - (c) facilitate improved understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation between the Parties on SPS issues under discussion in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate; and
  - (d) identify and discuss, at an early stage, initiatives that have an SPS component, and that would benefit from cooperation.
- 4. The SPS Sub-Committee may establish working groups comprising expert level representatives of the Parties, to address specific SPS issues.
- 5. A Party may refer any SPS issue to the SPS Sub-Committee. The SPS Sub-Committee should consider the issue without undue delay.
- 6. If the SPS Sub-Committee is unable to resolve an issue expeditiously, it shall, at the request of a Party, report promptly to the Joint Committee.
- 7. Unless the Parties decide otherwise, the SPS Sub-Committee shall meet and establish its work programme no later than 180 days following the entry into force of this Agreement, and its rules of procedure no later than one year after the entry into force of this Agreement.
- 8. Following its initial meeting, the SPS Sub-Committee shall meet as required, at least on an annual basis. The SPS Sub-Committee may decide to meet by videoconference or teleconference, and it may also address issues out of session by correspondence.
- 9. The SPS Sub-Committee shall report annually on its activities and work programme to the Joint Committee.
- 10. Upon entry into force of this Agreement, each Party shall designate and inform the other Parties, in writing, of a contact point to coordinate the SPS Sub-Committee's agenda and to facilitate communication on SPS matters.

## SECTION 2.4

### CUSTOMS AND TRADE FACILITATION

#### ARTICLE 2.51

##### *Objectives and Principles*

1. The Parties recognise the importance of customs and trade facilitation in the evolving global trading environment and will put in place customs arrangements that, where practicable, make use of all available facilitative arrangements and technologies.
2. The Parties affirm their rights and obligations under the WTO Agreement on Trade Facilitation.<sup>4</sup>
3. The Parties recognise that customs and international trade instruments and standards applicable in the area of customs and trade, such as the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures<sup>5</sup>, the International Convention on the Harmonized Commodity Description and Coding System<sup>6</sup>, the Customs Convention on the ATA Carnet for the Temporary Admission of Goods<sup>7</sup>, the SAFE Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework)<sup>8</sup>, the standards and recommendations set out by UN/CEFACT<sup>9</sup> and the Customs Data Model of the WCO<sup>10</sup> shall, where relevant, be taken into consideration for their import, export and transit requirements and procedures.

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<sup>4</sup> The Agreement on Trade Facilitation annexed to the Protocol Amending the Agreement establishing the WTO (decision of 27 November 2014).

<sup>5</sup> International Convention on the Simplification and Harmonization of Customs Procedures done at Kyoto on 18 May 1973 as amended by the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973 on 26 June 1999.

<sup>6</sup> The International Convention on the Harmonised Commodity Description and Coding System done at Brussels on 14 June 1983 as amended by the Protocol of Amendment to the International Convention on the Harmonized Commodity Description and Coding System on 24 June 1986.

<sup>7</sup> The Customs Convention on the ATA Carnet for the Temporary Admission of Goods done at Brussels on 6 December 1961.

<sup>8</sup> The SAFE Framework of Standards to Secure and Facilitate Global Trade adopted at the June 2005 WCO Session in Brussels and as updated from time to time.

<sup>9</sup> The standards and recommendations set out by the United Nations Centre for Trade Facilitation and Electronic Business.

<sup>10</sup> The library of data components and electronic templates for the exchange of business data and compilation of international standards on data and information used in applying regulatory facilitation and controls in global trade, published by the WCO Data Model Project Team from time to time.

4. The Parties recognise that legislation and other trade-related law shall be non-discriminatory, and customs procedures shall be based upon the use of modern methods and effective controls to achieve the protection and facilitation of legitimate trade.
5. The Parties recognise that their customs procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives and that they shall, where appropriate, be applied in a manner that is predictable, consistent and transparent.
6. In order to ensure transparency, efficiency, integrity and accountability of operations, the Parties shall:
  - (a) review and simplify requirements and formalities wherever possible with a view to facilitating the rapid release and clearance of goods;
  - (b) give consideration to the further simplification and standardisation of data and documentation required by customs and other agencies in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises;
  - (c) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field;
  - (d) ensure cooperation within each Party among customs and other border authorities; and
  - (e) provide for consultations between the Parties and their respective business communities.
7. The Parties shall seek to reinforce their cooperation 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.
8. A Party shall not require an original or a copy of an export declaration submitted to the customs authorities of the exporting Party as a requirement for importation. Nothing in this paragraph precludes a Party from requiring documents such as certificates, permits or licences as a requirement for the importation of controlled or regulated goods.

## ARTICLE 2.52

### *Transparency, Publication and Consultations*

1. Each Party shall to the extent practicable and in a manner consistent with its domestic law and legal system, publish in advance, and on the internet,

proposals for any laws relevant to international trade in goods, with a view to affording interested persons an opportunity to comment on them.

2. Each Party shall, according to its law, ensure that new or amended law of general application related to customs and trade facilitation issues, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.
3. Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1 and 2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1 and 2.
4. Each Party shall consult its business community with regard to the development and implementation of trade facilitation measures, giving particular attention to the interests of small and medium-sized enterprises.
5. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner including on the internet, its law and general administrative procedures and guidelines, related to customs and trade facilitation issues. These include:
  - (a) importation, exportation and transit procedures (including port, airport, and other entry point procedures) and required forms and documents;
  - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
  - (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
  - (d) rules for the classification or valuation of products for customs purposes;
  - (e) law and administrative rulings of general application relating to rules of origin;
  - (f) import, export or transit restrictions or prohibitions;
  - (g) penalty provisions against breaches of import, export or transit formalities;
  - (h) appeal procedures;
  - (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

- (j) procedures relating to the administration of tariff quotas;
  - (k) hours of operation and operating procedures for customs offices at ports and border crossing points; and
  - (l) points of contact for information enquiries.
6. Each Party shall establish or maintain one or more enquiry points to address enquiries by interested parties or persons concerning customs and other trade facilitation issues and shall make information concerning the procedures for making such enquiries publicly available on the internet.
  7. A Party shall not require the payment of a fee for answering enquiries or for providing the required forms and documents.
  8. The enquiry points shall answer enquiries and provide the required forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the enquiry.
  9. The information on fees and charges that shall be published in accordance with subparagraph 5(c) shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made. Such fees and charges shall not be applied until information on them has been published.

#### ARTICLE 2.53

##### ***Data, Documentation and Automation***

1. With a view to simplifying and minimising the complexity of import, export and transit formalities, data and documentation requirements, each Party shall ensure as appropriate, that such formalities, data and documentation requirements:
  - (a) are adopted or applied with a view to the rapid release of goods, in order to facilitate trade between the Parties; and
  - (b) are adopted or applied in a manner that aims to reduce the time and cost of compliance for traders and operators.
2. Each Party shall promote the development and use of advanced systems, including those based on information and communications technology, to facilitate the exchange of electronic data between traders or operators and its customs authorities and other trade-related agencies. This includes by:
  - (a) making electronic systems accessible to customs users;
  - (b) allowing a customs declaration to be submitted in electronic format;

- (c) using electronic or automated risk management systems; and
  - (d) permitting or requiring the electronic payment of duties, taxes, fees and charges collected by the customs authority of each Party and incurred upon importation and exportation.
- 3. Each Party shall endeavour to make publicly available electronic versions of trade administration documents.
- 4. Each Party shall accept the electronic versions of trade administration documents as the legal equivalent of paper documents except where:
  - (a) there is a domestic or international legal requirement to the contrary; or
  - (b) doing so would reduce the effectiveness of the trade administration process.
- 5. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, in order to facilitate trade between the Parties.
- 6. Each Party shall work towards further simplification of data and documentation required by its customs authorities and other related agencies.

#### ARTICLE 2.54

##### *Simplified Customs Procedures*

- 1. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its law to benefit from further simplification of customs procedures. A Party may offer such trade facilitation measures through procedures generally available to all operators and is not required to establish a separate scheme.
- 2. Each Party shall endeavour to ensure that these simplified procedures include:
  - (a) customs declarations containing a reduced set of data or supporting documents, including for the movement of low-value consignments;
  - (b) deferred payment of customs duties and taxes until after the release of those imported goods;
  - (c) aggregated customs declarations for the payment of customs duties and taxes that may cover multiple imports and enable payment at monthly or quarterly intervals; and



- (d) use of a guarantee with a reduced amount or a waiver from use of a guarantee.
- 3. The Parties agree to cooperate on and to consider further measures to reduce the administrative burdens on economic operators in relation to import and export.

## ARTICLE 2.55

### *Release of Goods*

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties and reduce costs for importers and exporters.
2. Each Party shall adopt or maintain procedures that:
  - (a) provide for the prompt release of goods, within, a period no longer than that required to ensure compliance with all applicable requirements and procedures, and as a maximum within 48 hours<sup>11</sup> of the goods and the relevant documents being presented to customs, in either case provided:
    - (i) the Party has received all information necessary to ensure compliance with all applicable requirements and procedures; and
    - (ii) the goods are not subject to physical inspection;
  - (b) to the extent possible and if applicable, provide for advance electronic submission and processing of import declarations and other information, including manifests, before the physical arrival of the goods to enable their release immediately upon arrival if no risk has been identified or if no other checks are to be performed;
  - (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities, save for goods which a Party classifies as controlled or regulated goods according to its law;
  - (d) allow goods which a Party classifies as controlled or regulated goods to be released at the point of arrival where possible, subject to any separate procedures which apply to those goods under that Party's law;
  - (e) 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 promptly upon arrival, and provided that all other

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<sup>11</sup> For Iceland and Norway, this period excludes weekends and public holidays.

regulatory requirements have been met. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and

- (f) to the extent possible and if applicable, provide for, in accordance with its law, clearance of certain goods with a minimum of documentation.
- 3. Each Party shall adopt or maintain customs procedures under which goods in need of urgent clearance, including perishable goods, can be released promptly.
  - 4. In order to avoid deterioration of perishable goods, each Party shall:
    - (a) either arrange for or allow an importer to arrange for the proper storage of perishable goods pending their release. The Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Party shall, where practicable and consistent with its domestic legislation and international obligations upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities; and
    - (b) in cases of delays in the release of perishable goods, the importing Party shall, to the extent practicable, provide, upon request, an explanation of the reason(s) for the delay.
  - 5. Each Party shall ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate to facilitate trade by, among other things, ensuring a high level of service for traders at their respective borders to a reasonable extent.

#### ARTICLE 2.56

##### ***Risk Management***

- 1. Each Party shall maintain a risk management system using electronic data-processing techniques for customs control that enables its customs authorities to focus its inspection activities on high-risk consignments and to expedite the release of low-risk consignments.
- 2. Each Party shall design and apply its risk management in a manner which avoids arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall base its risk management on assessment of risk through appropriate selectivity criteria.
4. Each Party may also select, on a random basis, consignments for inspection activities referred to in paragraph 1 as part of its risk management.
5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

#### ARTICLE 2.57

##### *Advance Rulings*

1. Each Party shall issue, through its customs authorities, an advance ruling that sets forth the treatment to be provided to the goods concerned. That ruling shall be issued in a reasonable, time bound manner and in any event within 90 days after the customs authority receives a written request (which may be in electronic format) from an applicant, providing it contains all necessary information in accordance with the law of the issuing Party. A Party may request a sample of the good for which the applicant is seeking an advance ruling.
2. An advance ruling shall cover tariff classification of the goods, origin of goods including their qualification as originating goods under Section 2.1 (General Provisions on Trade in Goods) and any other matter as the Parties may agree.
3. The advance ruling shall be valid for at least a three-year period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.
4. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review, or where the application is not based on factual information, or does not relate to any intended use of the advance ruling. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
5. Each Party shall publish on the internet, 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.

6. Where a Party revokes, modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where the Party revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, inaccurate, false or misleading information provided by the applicant.
7. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it and on the applicant.
8. Each Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate it.
9. Each Party shall make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

#### ARTICLE 2.58

##### ***Customs Valuation***

For the purpose of determining the customs value of goods traded between the Parties, the provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement shall apply, *mutatis mutandis*.

#### ARTICLE 2.59

##### ***Authorised Economic Operator***

1. Each Party shall establish or maintain a trade facilitation partnership programme for operators who meet specified criteria, hereinafter referred to as the Authorised Economic Operator (AEO) programme, in accordance with the SAFE Framework.
2. The specified criteria to qualify as an AEO shall be published and relate to compliance, or the risk of non-compliance, with requirements specified in the Parties' law or procedures. The Parties may use the criteria set out in paragraph 7.2 (a) of Article 7 of the WTO Agreement on Trade Facilitation.
3. The specified criteria to qualify as an AEO 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 AEO programme shall include specific benefits for such operators, taking into account the commitments of the Parties under paragraph 7.3 of Article 7 of the WTO Agreement on Trade Facilitation.
5. The Parties may cooperate in establishing, where relevant and appropriate, the mutual recognition of their AEO programmes, provided that the programmes are compatible and based on equivalent criteria and benefits.
6. This Article shall not apply to the Bailiwick of Jersey or the Bailiwick of Guernsey.

#### ARTICLE 2.60

##### ***Review and Appeal***

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against an administrative decision on a customs matter.
2. Each Party shall ensure that any person to whom it issues an administrative decision on a customs matter has access to:
  - (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
  - (b) a judicial appeal or review of the decision.
3. Each Party shall provide that any person who has applied to the customs authorities for a decision and has not obtained an administrative decision on that application within the relevant time-limits shall also be entitled to exercise the right of appeal.
4. Each Party shall provide a person to whom it issues an administrative decision with the reasons for the administrative decision, so as to enable such a person to have recourse to appeal procedures where necessary.

#### ARTICLE 2.61

##### ***Penalties***

1. Each Party shall provide for penalties for failure to comply with its law or procedural requirements related to customs.
2. Each Party shall ensure that its law provides that any penalties imposed for breaches of customs law or procedural requirements be proportionate and non-discriminatory. A penalty for minor breaches, such as inadvertent omissions or mistakes, including mistakes in interpretation of a customs law

or procedural requirement relevant to international trade in goods, made without fraudulent intent or gross negligence, shall not be greater than necessary to discourage a repetition of such errors.

3. Each Party shall ensure that a penalty imposed by its customs authorities for a breach of its customs law or procedural requirements is imposed only on the person(s) legally responsible for the breach.
4. Each Party shall ensure that the penalty imposed depends on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.
5. Each Party shall avoid incentives or conflicts of interest in the assessment and collection of penalties and duties.
6. Each Party shall require its customs authorities, when imposing a penalty for a breach of its customs law or procedural requirements, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authorities.
7. Each Party shall ensure that if a penalty is imposed for a breach of customs law or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed, specifying the nature of the breach and the applicable law or procedure under which the amount or range of penalty for the breach has been prescribed.
8. Each Party shall provide in its law or procedures, or otherwise give effect to, a fixed and finite period within which its customs authorities may initiate proceedings to impose a penalty relating to a breach of a customs law or procedural requirement.

## ARTICLE 2.62

### ***Customs Cooperation and Mutual Administrative Assistance***

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Section in accordance with the provisions of Annex XV (Mutual Administrative Assistance in Customs Matters).
2. The customs authorities of the Parties shall enhance cooperation on the matters referred to in this Section with a view to further developing trade facilitation while ensuring compliance with their respective customs law and procedural requirements, and improving supply chain security, in the following areas:

- (a) cooperation on harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;
  - (b) cooperation on further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework; and
  - (c) cooperation on improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results.
3. The customs authorities of the Parties shall ensure the exchange of information necessary for the purposes of paragraph 2.

#### ARTICLE 2.63

##### ***Single Window***

Each Party shall endeavour to develop or maintain single window systems to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation and transit of goods.

#### ARTICLE 2.64

##### ***Transit and Transshipment***

Each Party shall:

- (a) ensure the facilitation and effective control of transshipment operations and transit movements through that Party;
- (b) endeavour to promote and implement regional transit arrangements with a view to facilitating trade;
- (c) ensure cooperation and coordination between all concerned authorities and agencies in that Party to facilitate traffic in transit; and
- (d) allow goods intended for import to be moved within that Party under customs control from a customs office of entry to another customs office in the Party from where the goods would be released or cleared.

## ARTICLE 2.65

### ***Post-Clearance Audit***

1. With a view to expediting the release of goods, each Party shall:
  - (a) adopt or maintain post-clearance audit to ensure compliance with customs and other related law;
  - (b) conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;
  - (c) conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results and the audited person's rights and obligations; and
  - (d) wherever practicable, use the result of post-clearance audits in applying risk management.
2. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

## ARTICLE 2.66

### ***Customs Brokers***

The Parties:

- (a) agree that their respective customs provisions and procedures shall not require the mandatory use of customs brokers;
- (b) shall publish measures on the use of customs brokers; and
- (c) shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

## ARTICLE 2.67

### ***Competent Customs Offices***

1. Each Party shall determine the location and competence of its customs offices.
2. Each Party shall ensure that reasonable and appropriate official opening hours are fixed for those offices, taking into account the nature of the traffic



and of the goods and the customs procedures under which they are to be placed, so that the flow of traffic is neither hindered nor distorted.

#### ARTICLE 2.68

##### ***Border Agency Cooperation***

Each Party shall ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate its procedures in order to facilitate trade.

#### ARTICLE 2.69

##### ***Confidentiality***

1. Each Party shall maintain, in conformity with its law, the confidentiality of information collected as part of its customs processes and shall protect that information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates. If the Party receiving or obtaining the information is required by its law to disclose the information, that Party shall notify the person or Party who provided that information.
2. Each Party shall ensure that the confidential information collected as part of its customs processes shall not be used or disclosed for purposes other than the administration and enforcement of customs matters or as otherwise provided for under the Party's law, except with the permission of the person or Party who provided the confidential information.
3. Notwithstanding paragraph 2, a Party may allow information collected as part of its customs processes to be used and disclosed in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs related law. A Party shall notify the person or Party who provided the information in advance of such use.
4. If confidential information is used or disclosed other than in accordance with this Article, the Party concerned shall address the incident, in accordance with its law or procedures, and review or update its processes and safeguards, as appropriate, to prevent a reoccurrence.
5. The Parties shall exchange information on their respective law for the purpose of facilitating the operation and application of paragraph 2.

## **SECTION 2.5**

### **TRADE REMEDIES**

#### **GENERAL PROVISIONS**

##### **ARTICLE 2.70**

###### ***Dispute Settlement***

Except for paragraph 1 of Article 2.73 (Lesser Duty Rule and Public Interest), Chapter 16 (Dispute Settlement) shall not apply to this Section.

#### **ANTI-DUMPING AND COUNTERVAILING MEASURES**

##### **ARTICLE 2.71**

###### ***General Provisions***

1. The Parties shall endeavour to refrain from initiating anti-dumping procedures against each other.
2. Notwithstanding paragraph 1 of this Article, the Parties reaffirm their rights and obligations under Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) and the SCM Agreement.

##### **ARTICLE 2.72**

###### ***Investigations***

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping or a countervailing investigation with respect to imports from another Party, and, before initiating an investigation, the Party shall provide written notification to the Party concerned of its receipt of the application.
2. Before initiating a countervailing investigation, the Party shall also afford the Party concerned a meeting to consult with its investigating authority regarding the application.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation<sup>12</sup> shall be granted a full opportunity to defend its interests.
4. Each Party shall ensure, before a final determination is made, full disclosure of the essential facts under consideration which form the basis for the decision as to whether to apply definitive measures. The full disclosure of essential facts is without prejudice to the requirements to confidentiality referred to in Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Such disclosure shall be made in writing and should take place in sufficient time for interested parties to defend their interests.
5. A Party proposing to take a countervailing measure shall, upon request, consult with the Party concerned as far in advance of applying a measure as practicable, with the view of reviewing the information arising from the investigation and exchanging views on the proposed measure.
6. The disclosure of the essential facts, which is made in accordance with paragraph 3, shall contain in particular:
  - (a) in the case of an anti-dumping investigation, the margins of dumping established, a sufficiently detailed explanation of the basis and methodology upon which normal values and export prices were established and of the methodology used in the comparison of the normal values and export prices, including any adjustments;
  - (b) in the case of a countervailing duty investigation, the determination of countervailable subsidisation, including sufficient details on the calculation of the amount and methodology followed to determine the existence of subsidisation;
  - (c) in the case of an anti-dumping investigation, information relevant to the determination of injury, including information concerning the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, the detailed methodology used in the calculation of price undercutting, the consequent impact of the dumped imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the dumped imports as referred to in Article 3.5 of the Anti-Dumping Agreement; and
  - (d) in the case of a countervailing duty investigation, information relevant to the determination of injury, including information on the volume of the subsidised imports and the effect of the subsidised imports on prices in the domestic market for like products, the

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<sup>12</sup> For the purpose of this Article, interested parties shall be defined as set out in Article 6.11 of the Anti-Dumping Agreement and Article 12.9 of the SCM Agreement.

consequent impact of the subsidised imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the subsidised imports as referred to in Article 15.5 of the SCM Agreement.

7. In cases in which an investigating authority of a Party intends to make use of the facts available pursuant to Article 6.8 of the Anti-Dumping Agreement or Article 12.7 of the SCM Agreement, the investigating authority shall inform the interested party concerned of its intentions and give a clear indication of the reasons which may lead to the use of the facts available. If, after having been given the opportunity to provide further explanations within a reasonable time period, the explanations given by the interested party concerned are considered by the investigating authority as not being satisfactory, the disclosure of essential facts shall contain a clear indication of the facts available that the investigating authority has used instead.

#### ARTICLE 2.73

##### ***Lesser Duty Rule and Public Interest***

1. If a Party decides to impose an anti-dumping or a countervailing duty, the Party shall apply the “lesser duty” rule by determining a duty which is less than the dumping margin or amount of subsidy, when such lesser duty would be adequate to remove the injury to the domestic industry.
2. Each Party’s investigating authority shall consider information provided in accordance with the Party’s law as to whether imposing an anti-dumping or a countervailing duty would not be in the public interest.

#### SAFEGUARD MEASURES

#### ARTICLE 2.74

##### ***General Provisions and Transparency***

1. The Parties reaffirm their rights and obligations concerning global safeguard measures under Article XIX of GATT 1994 and the Agreement on Safeguards.
2. At the request of the Party concerned, the Party intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings, and the final findings of the investigation.
3. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

**CHAPTER 3**  
**SERVICES AND INVESTMENT**

**SECTION 3.1**  
**GENERAL PROVISIONS ON SERVICES AND INVESTMENT**

ARTICLE 3.1

*Scope*

1. This Chapter does not apply to:
  - (a) activities performed in the exercise of governmental authority; and
  - (b) audio-visual services.
2. This Chapter does not apply to any measure of a Party with respect to procurement by a Party.
3. Except for Article 3.10 (Performance Requirements), this Chapter does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurances.
4. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of another Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
5. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to another Party under the terms of this Chapter.<sup>13</sup>
6. This Chapter does not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

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<sup>13</sup> The sole fact of requiring a visa for natural persons of a Party shall not be regarded as nullifying or impairing benefits accrued under this Chapter.

- (a) repair or maintenance services on an aircraft or a part thereof during which the aircraft or the part is withdrawn from service, excluding so-called line maintenance;
  - (b) selling and marketing of air transport services;
  - (c) computer reservation system services;
  - (d) specialty air services;<sup>14</sup>
  - (e) airport operation services; and
  - (f) ground handling services.
7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the United Kingdom and one or more EEA EFTA States are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.
8. If the United Kingdom and one or more EEA EFTA States have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

## ARTICLE 3.2

### *Definitions*

1. For the purposes of this Chapter:
- (a) “activities performed in the exercise of governmental authority” means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;
  - (b) “airport operation services” means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

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<sup>14</sup> Subparagraph (d) shall be subject to compliance with the Parties’ respective laws and regulations governing the admission of aircraft to, departure from and operation within, the Party.

- (c) “computer reservation system services” means the supply of a service by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) “covered enterprise” means an enterprise established in a Party, directly or indirectly, by an investor of another Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;
- (e) “cross-border trade in services” or “cross-border supply of services” means the supply of a service:
  - (i) from within a Party into another Party; or
  - (ii) within a Party to the service consumer of another Party;
- (f) “economic activity” means any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;
- (g) “enterprise” means a legal person, or a branch or a representative office of a legal person;
- (h) “establishment” means the setting-up, acquisition, or expansion of an enterprise;
- (i) “ground handling services” means the supply of a service on a fee or contract basis for: airline representation, administration and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; cargo and mail handling; fuel and oil handling; aircraft line maintenance; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security services; fixed intra-airport transport systems; aircraft repair and maintenance; or the operation or management of centralised airport infrastructure such as baggage handling systems, de-icing facilities, or fuel distribution systems;
- (j) “investor of another Party” means:
  - (i) a natural person of a Party;
  - (ii) a legal person of a Party; or
  - (iii) a Party

that seeks to establish, is establishing, or has established, an enterprise;

- (k) “legal 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;
- (l) “legal person of a Party” means a legal person constituted or organised under the law of a Party and that carries out substantial business activities in that Party;<sup>15</sup>

For the purposes of Section 3.3 (Cross-Border Trade in Services) and Sub-Section 3.5.5 (International Maritime Transport Services), “legal person of a Party” includes a legal person of a non-Party owned or controlled by a person of a Party, if any of its vessels are registered in accordance with the law of that Party and flying the flag of that Party, when supplying services using those vessels;

- (m) “measure” means any measure by a Party, whether in the form of a law, regulation, rule procedure, decision, administrative action, requirement, practice or in any other form;<sup>16</sup>
- (n) “measures of a Party” means measures adopted or maintained by:
  - (i) central, regional or local governments or authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (o) “natural person of a Party” means:
  - (i) in respect of the United Kingdom, a British citizen in accordance with its applicable law;
  - (ii) in respect of the EEA EFTA States, a natural person who has the nationality of an EEA EFTA State in accordance with its applicable law;
- (p) “operation” means the conduct, management, maintenance, use, enjoyment and sale or other disposal of an enterprise;

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<sup>15</sup> A legal person shall be deemed to carry out substantial business activities in a Party if it has a genuine link to the economy of that Party. As to whether a legal person has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the legal person (a) has a continuous physical presence, including through ownership or rental of premises, in that Party; (b) has its central administration in that Party; (c) employs staff in that Party; and (d) generates turnover and pays taxes in that Party.

<sup>16</sup> For greater certainty, the term “measure” includes failures to act.



- (q) “person” means a natural person or a legal person;
- (r) “person of a Party” means a natural person of a Party or a legal person of a Party;
- (s) “selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable conditions;
- (t) “service supplier of a Party” means a person of a Party that supplies, or seeks to supply, a service; and
- (u) “specialty air service” means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, aerial advertising, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

### ARTICLE 3.3

#### ***Sub-Committee on Services and Investment***

1. The Parties hereby establish a Sub-Committee on Services and Investment, which shall be responsible for the effective implementation and operation of this Chapter.
2. The Sub-Committee on Services and Investment shall have the following functions:
  - (a) reviewing and monitoring the implementation and operation of this Chapter and each Party’s Schedules in Annexes XVI to XIX;
  - (b) exchanging information and discussing regulatory or other issues relating to the supply of maritime transport services, including with respect to relevant laws and regulations, existing or proposed, and their implementation;
  - (c) exchanging information and discussing regulatory or other issues relating to the supply of delivery services, including with respect to relevant laws and regulations, existing or proposed, and their implementation;
  - (d) carrying out the functions provided for in Article 3.69 (International Mobile Roaming Services);

- (e) holding consultations referred to in paragraph 2 of Article 5.3 (Capital Movements) and paragraph 6 of Article 5.5 (Restrictions in Case of Balance of Payments and External Financial Difficulties) of Chapter 5 (Capital Movements, Payments and Transfers);
  - (f) exchanging information on any other matters related to this Chapter;
  - (g) examining possible improvements to this Chapter;
  - (h) discussing any issue related to this Chapter or Chapter 5 (Capital Movements, Payments and Transfers) as may be agreed upon between the representatives of the Parties; and
  - (i) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 2 (e) of Article 15.1 (Joint Committee) of Chapter 15 (Institutional Provisions).
3. The Sub-Committee on Services and Investment shall be composed of representatives of the Parties including officials of relevant ministries or agencies in charge of the issues to be addressed. The Sub-Committee on Services and Investment may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

#### ARTICLE 3.4

##### ***Denial of Benefits***

A Party may deny the benefits of this Chapter and Chapter 5 (Capital Movements, Payments and Transfers) to an investor or service supplier of another Party that is a legal person of that Party, or to a covered enterprise of that legal person, if:

- (a) a non-Party or a person of a non-Party owns or controls the legal person; and
- (b) the denying Party adopts or maintains a measure with respect to the non-Party or the person of the non-Party which is related to the maintenance of international peace and security, including the protection of human rights, and prohibits transactions with that legal person or covered enterprise, or which would be violated or circumvented if the benefits of this Chapter or Chapter 5 (Capital Movements, Payments and Transfers) were accorded to that legal person or its covered enterprise.

## SECTION 3.2

### INVESTMENT LIBERALISATION

#### ARTICLE 3.5

##### *Scope*

This Section shall apply to measures of a Party affecting the establishment of an enterprise to perform economic activities and the operation of such an enterprise by:

- (a) investors of another Party;
- (b) covered enterprises; and
- (c) with respect to Article 3.10 (Performance Requirements), all enterprises in the Party which adopts or maintains the measure.

#### ARTICLE 3.6

##### *Market Access*

A Party shall not adopt or maintain with respect to establishment of an enterprise by an investor of another Party or by a covered enterprise, or operation of a covered enterprise, a measure, whether it applies to the Party as a whole or to any division thereof, that:

- (a) imposes limitations on:<sup>17</sup>
  - (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;
  - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of operations or 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;

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<sup>17</sup> Subparagraphs (a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.

- (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
  - (v) 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 an economic activity, in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restricts or requires a specific type of legal entity or joint venture through which an investor of another Party may perform an economic activity.

#### ARTICLE 3.7

##### ***National Treatment***

Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their enterprises with respect to the establishment or operation in that Party.

#### ARTICLE 3.8

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

1. Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a non-Party and to their enterprises, with respect to establishment or operation in that Party.<sup>18</sup>
2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of another Party or to covered enterprises the benefit of any treatment resulting from measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licensing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
3. For greater certainty, the “treatment” referred to in paragraph 1 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

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<sup>18</sup> For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors (and to their enterprises) of territories for whose international relations the United Kingdom is responsible.

4. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a non-Party, or the mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the “treatment” referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

#### ARTICLE 3.9

##### ***Senior Management and Boards of Directors***

A Party shall not require a covered enterprise to appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the Party.

#### ARTICLE 3.10

##### ***Performance Requirements***

1. A Party shall not, in connection with the establishment or operation of any enterprise in that Party, impose or enforce any requirement or enforce any commitment or undertaking:<sup>19</sup>
  - (a) to export a given level or percentage of goods or services;
  - (b) to achieve a given level or percentage of domestic content;
  - (c) to purchase, use or accord a preference to goods produced or services supplied in that Party, or to purchase goods or services from a person in that Party;
  - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that enterprise;
  - (e) to restrict sales of goods or services in that Party that the enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;
  - (f) to restrict exportation or sale for export;
  - (g) to transfer technology, a production process or other proprietary knowledge to a person in that Party;

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<sup>19</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

- (h) to locate the regional or world headquarters of an enterprise in that Party;
- (i) to hire a given number or percentage of natural persons of that Party;
- (j) to achieve a given level or value of research and development in that Party;
- (k) to supply one or more of the goods produced or services supplied by such enterprise to a specific region or to the world market exclusively from that Party; or
- (l) to adopt:
  - (i) a rate or amount of royalty below a certain level; or
  - (ii) a given duration of the term of a licence contract;<sup>20</sup>

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or legal person or any other entity in that Party, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of Party.<sup>21</sup>

2. A Party shall not, in connection with the establishment or operation of any enterprise in that Party, make the receipt or continued receipt of an advantage conditional upon compliance with any requirement:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services supplied in that Party, or to purchase goods or services from a person 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 that enterprise;
- (d) to restrict sales of goods or services in that Party that the enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

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<sup>20</sup> A “licence contract” referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

<sup>21</sup> For greater certainty, subparagraph (l) does not apply when the licence contract is concluded between the enterprise and a Party.

- (e) to restrict exportation or sale for export.
3. For greater certainty, nothing in paragraph 1 shall be construed as preventing the enforcement by a Party of an undertaking voluntarily given<sup>22</sup> by a person in relation to a takeover or merger.
  4. Nothing in paragraph 2 shall be construed as preventing a Party, in connection with the establishment or operation of any enterprise in that Party, from making the receipt or continued receipt or an advantage conditional upon compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in that Party.
  5. Subparagraphs 1(a) to (c) and 2(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
  6. Subparagraphs 1(g) and (l) do not apply when:
    - (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal, or by a competition authority pursuant to a Party's competition law; or
    - (b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
  7. Subparagraph 1(l) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.
  8. Subparagraphs 2(a) and (b) do not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
  9. This Article is without prejudice to the obligations of a Party under the Agreement on Trade-Related Investment Measures set out in Annex 1A to the WTO Agreement.
  10. For greater certainty, this Article does not preclude the enforcement of any requirement, commitment or undertaking between private parties, if a Party did not impose the requirement, commitment or undertaking.

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<sup>22</sup> An "undertaking voluntarily given" means that it is not required by a Party as a condition of the approval of the takeover or merger.

## ARTICLE 3.11

### *Investment and Sustainable Development*

1. The Parties recognise the importance of environmental protection in connection with the establishment and operation of enterprises and reaffirm the Parties' rights and obligations relating to the protection of the environment, including climate change, provided for in this Agreement.
2. The Parties recognise the importance of encouraging the adherence to responsible business practices by covered enterprises and reaffirm the Parties' obligations in this regard, as set out in Article 13.11 (Responsible Business Conduct) of Chapter 13 (Trade and Sustainable Development).

## ARTICLE 3.12

### *Non-Conforming Measures*

1. Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) and 3.10 (Performance Requirements) do not apply to:
  - (a) an existing non-conforming measure that is maintained by a Party at the level of:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
    - (iii) a local government;
  - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) or 3.10 (Performance Requirements).
2. Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) and 3.10 (Performance Requirements) do not apply to a measure of a Party that is consistent with the reservations, conditions or



qualifications specified with respect to a sector, subsector or activity, as set out by that Party in its Schedule to Annex XVII (Future Measures).

3. In respect of intellectual property rights, a Party may derogate from subparagraph 1(g) of Article 3.10 (Performance Requirements) and Articles 3.7 (National Treatment) and 3.8 (Most-Favoured-Nation Treatment) if permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for all Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.
4. Notwithstanding Articles 3.7 (National Treatment) and 3.8 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party, or its covered enterprise, to provide information concerning that enterprise for informational or statistical purposes, provided that those requests are reasonable and not unduly burdensome. The Party shall protect confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered enterprise. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

### SECTION 3.3

#### CROSS-BORDER TRADE IN SERVICES

##### ARTICLE 3.13

###### *Scope*

This Section shall apply to measures of a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
- (d) the provision of a bond or other form of financial security as a condition for the supply of a service.

##### ARTICLE 3.14

###### *Market Access*

A Party shall not adopt or maintain, a measure, whether it applies to the Party as a whole or to any division thereof, that:

- (a) imposes a limitation on:
  - (i) the number of services suppliers, whether in the form of a numerical quota, monopoly, exclusive service suppliers or the requirement of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>23</sup> or

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<sup>23</sup> Subparagraph (a)(iii) does not cover measures adopted or maintained by a Party which limits inputs for the supply of services.

- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

#### ARTICLE 3.15

##### ***Local Presence***

A Party shall not require a service supplier of another Party to establish or maintain an enterprise, or to be resident, in that Party as a condition for the cross-border supply of a service.

#### ARTICLE 3.16

##### ***National Treatment***

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another 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 another Party.
4. Nothing in this Article shall be construed as requiring a Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services or service suppliers.

#### ARTICLE 3.17

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

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.<sup>24</sup>

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<sup>24</sup> For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of another Party the benefit of any treatment resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
3. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a non-Party, or mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the “treatment” referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

#### ARTICLE 3.18

##### *Non-Conforming Measures*

1. Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment), and Article 3.17 (Most-Favoured-Nation Treatment) do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment) or Article 3.17 (Most-Favoured-Nation Treatment).
2. Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment), and Article 3.17 (Most-Favoured-Nation Treatment) do not apply to any measure of a Party that is consistent with the reservations, conditions or qualifications specified with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex XVII (Future Measures).

## **SECTION 3.4**

### **ENTRY AND TEMPORARY STAY OF NATURAL PERSONS**

#### **ARTICLE 3.19**

##### ***General Provisions and Scope***

1. This Section reflects the preferential trade relationship between the Parties as well as the desire of the Parties to facilitate entry and temporary stay of natural persons for business purposes on a reciprocal basis, and to ensure transparency of the process.
2. This Section applies to measures by a Party affecting entry into that Party by natural persons of another Party, who are business visitors for establishment purposes, intra-corporate transferees, contractual service suppliers, independent professionals and short-term business visitors and to measures affecting their business activities during their temporary stay in the former Party.
3. To the extent that commitments are not undertaken in this Section, all requirements provided for in the law of a Party regarding the entry and temporary stay shall continue to apply, including rules concerning the length of stay.
4. Notwithstanding the provisions of this Section, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including rules concerning minimum wages and collective wage agreements.
5. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in such a dispute or negotiation.
6. This Section does not apply to measures:
  - (a) affecting natural persons of a Party seeking access to the employment market of another Party; or
  - (b) regarding nationality or citizenship, residence or employment on a permanent basis.
7. This Section shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that

such measures are not applied in such a manner as to nullify or impair the benefits accruing to another Party under the terms of this Section.<sup>25</sup>

8. This Section, Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors) and Annex XIX (Contractual Service Suppliers and Independent Professionals) only apply to a Party's territory described in subparagraph (1)(a) of Article 1.2 (Territorial Application) of Chapter 1 (General Provisions).

## ARTICLE 3.20

### *Definitions*

For the purposes of this Section:

- (a) "business visitors for establishment purposes" means natural persons working in a senior position within a legal person of a Party, who:
  - (i) are responsible for setting up an enterprise of the same group in the Party granting entry;
  - (ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise; and
  - (iii) do not receive remuneration from a source located in the Party granting entry;
- (b) "contractual service suppliers" means natural persons employed by a legal person of a Party that:
  - (i) is itself not an agency for placement and supply services of personnel and is not acting through such an agency;
  - (ii) is not established in the Party granting entry; and
  - (iii) has concluded a *bona fide* contract to supply a service to a final consumer in another Party, requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to supply the service in question;<sup>26</sup>
- (c) "independent professionals" means natural persons who are engaged in the supply of a service and are established as self-employed in a Party who:

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<sup>25</sup> Requiring a visa for natural persons of a certain country, and not for those of others, shall not in itself be regarded as nullifying or impairing benefits accrued under this Section.

<sup>26</sup> The contract to supply services referred to in subparagraph (b)(iii) shall comply with the requirements of the law that applies in the place where the contract is executed.

- (i) have not established in the Party granting entry; and
  - (ii) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) to supply a service to a final consumer in the Party granting entry, requiring their presence on a temporary basis in the latter Party in order to fulfil the contract to supply the service in question;<sup>27</sup>
- (d) “intra-corporate transferees” means natural persons who have been employed by a legal person of a Party or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay, and who are temporarily transferred to a legal person in another Party, which forms part of the same group as the former legal person, including its representative office, subsidiary, branch or head company, provided that the natural person concerned belongs to one of the following categories:
- (i) “managers”: natural persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, and whose responsibilities include at least:
    - (aa) directing the enterprise or a department or subdivision thereof;
    - (ab) supervising and controlling the work of other supervisory, professional or managerial employees; or
    - (ac) having the authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions; or
  - (ii) “specialists”: natural persons who possess:
    - (aa) specialised knowledge essential to the enterprise’s products or services and its application in international markets; or
    - (ab) an advanced level of expertise or knowledge of the enterprise’s processes and procedures such as its

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<sup>27</sup> The contract to supply services referred to in subparagraph (c)(ii) shall comply with the requirements of the law that applies in the place where the contract is executed.

production, research equipment, techniques, or management;<sup>28</sup> or

- (iii) “graduate trainees”: natural persons who:
  - (aa) possess a university degree at least at bachelor’s level; and
  - (ab) are temporarily transferred to an enterprise in the Party granting entry for career development purposes, or to obtain training in business techniques or methods, and are paid during the period of the transfer.

#### ARTICLE 3.21

##### ***General Obligations***

1. A Party shall grant the entry and temporary stay to natural persons of another Party for business purposes in accordance with this Section, and Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors) and Annex XIX (Contractual Service Suppliers and Independent Professionals), provided that those persons comply with the immigration law of the former Party applicable to the entry and temporary stay.
2. Each Party shall apply its measures relating to the provisions of this Section consistently with the desire of the Parties set out in paragraph 1 of Article 3.19 (General Provisions and Scope), and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services, or establishment or operation under this Agreement.

#### ARTICLE 3.22

##### ***Application Procedures***

1. The measures taken by each Party to facilitate and expedite procedures related to the entry and temporary stay of natural persons of another Party for business purposes shall be consistent with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), Annex XIX (Contractual Service Suppliers and Independent Professionals) and this Article.

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<sup>28</sup> In assessing such expertise or knowledge, the Parties will consider abilities that are unusual and different from those generally found in a particular industry and that cannot be easily transferred to another natural person in the short-term. Those abilities would have been obtained through specific academic, or equivalent, qualifications or extensive experience within the enterprise.



2. The Parties should ensure that the processing of applications for entry and temporary stay pursuant to their respective commitments in this Agreement follows good administrative practice. To that effect:
  - (a) the Parties shall ensure that fees charged by competent authorities for the processing of applications for the entry and temporary stay do not unduly impair or delay trade in goods or services or establishment or operation under this Agreement;
  - (b) subject to the competent authorities' discretion, documents required from the applicant for applications for the grant of entry and temporary stay of short-term visitors for business purposes should be commensurate with the purpose for which they are collected;
  - (c) if the competent authorities of a Party require additional information from the applicant in order to process the application, they shall endeavour to notify, without undue delay, the applicant of the required additional information;
  - (d) the competent authorities of a Party shall notify the applicant of the outcome of the application promptly after a decision has been taken; if the application is approved, the competent authorities of a Party shall notify the applicant of the period of stay and other relevant terms and conditions; if the application is denied, the competent authorities of a Party shall, upon request or upon their own initiative, make available to the applicant information on any available review or appeal procedures;
  - (e) each Party shall endeavour to accept and process applications in electronic format; and
  - (f) each Party shall, to the extent practicable, ensure that relevant application forms, guidance, eligibility requirements, costs and processing times are accessible through a single online portal.
3. To the extent practicable, the competent authorities of a Party shall adopt a decision on an application for entry and temporary stay of a natural person of a category outlined in paragraph 2 of Article 3.19 (General Provisions and Scope), or a renewal of it, and shall notify the decision to the applicant in writing, in accordance with the notification procedures under the relevant Party's law, as soon as possible but not later than 90 days after the date on which a complete application was submitted. Where it is not practicable for a decision to be made within 90 days, they shall endeavour to make the decision within a reasonable time thereafter.
4. Where information or documentation for the application is incomplete, and additional information is required to process the application, the competent authorities shall endeavour to notify the applicant without undue delay of the additional information that is required and set a reasonable deadline for

providing it. The period referred to in paragraph 3 shall be suspended until the competent authorities have received the required additional information.

#### ARTICLE 3.23

##### ***Cooperation on Return and Readmissions***

The Parties acknowledge that the enhanced movement of natural persons following from Article 3.22 (Application Procedures) requires full cooperation from the relevant Parties to support the return and readmission of natural persons staying in a Party in contravention of its law for entry and temporary stay.

#### ARTICLE 3.24

##### ***Transparency***

1. A Party shall make publicly available information relating to the entry and temporary stay by natural persons of another Party, referred to in paragraph 2 of Article 3.19 (General Provisions and Scope).
2. The information referred to in paragraph 1 shall include, where applicable, the following information:
  - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
  - (b) documentation required and conditions to be met;
  - (c) method of filing an application and options on where to file, such as consular offices or online;
  - (d) application fees and an indicative timeframe of the processing of an application;
  - (e) the maximum length of stay under each type of authorisation described in subparagraph (a);
  - (f) conditions for any available extension or renewal;
  - (g) rules regarding accompanying dependents;
  - (h) available review or appeal procedures; and
  - (i) relevant law of general application pertaining to the entry and temporary stay of natural persons for business purposes.
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to inform the other Parties of any changes in requirements

and procedures where such changes would affect the enjoyment by applicants for entry and temporary stay of the benefits of this Section.

#### ARTICLE 3.25

##### ***Business Visitors for Establishment Purposes and Intra-Corporate Transferees***

1. Each Party shall grant entry and temporary stay to business visitors for establishment purposes and intra-corporate transferees in accordance with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors).
2. Each Party shall allow the entry and temporary stay of business visitors for establishment purposes without requiring a work permit or other prior approval procedure of similar intent.
3. A Party shall not adopt or maintain limitations, whether they apply to the Party as a whole or to any division thereof, on the total number of natural persons granted entry in accordance with paragraph 1, in a specific sector or sub-sector, in the form of numerical quotas or the requirement of an economic needs test.
4. Each Party shall accord to business visitors for establishment purposes and intra-corporate transferees of another Party, during their temporary stay in that Party, treatment no less favourable than that it accords, in like situations, to its own natural persons.
5. Iceland, Liechtenstein and Norway shall allow the entry and temporary stay of the partners<sup>29</sup> and dependent children<sup>30</sup> of intra-corporate transferees from the United Kingdom in the category of managers and specialists for the same period as the period of temporary stay granted to the intra-corporate transferee.
6. The United Kingdom shall allow the entry and temporary stay of the partners<sup>31</sup> and dependent children<sup>32</sup> of intra-corporate transferees from

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<sup>29</sup> For the purposes of this paragraph, “partner” means any spouse or civil partner of an intra-corporate transferee from the United Kingdom, including under a marriage, civil partnership or equivalent union or partnership, recognised as such in accordance with the law of Iceland, Liechtenstein or Norway, respectively. For the avoidance of doubt, this also includes any unmarried or same sex partner who, when accompanying an intra-corporate transferee from one Party, may be granted temporary entry and stay under the relevant law of Iceland, Liechtenstein or Norway, respectively.

<sup>30</sup> For the purposes of this paragraph, “dependent children” means children who are dependent on an intra-corporate transferee from the United Kingdom and recognised as such in accordance with the law of Iceland, Liechtenstein or Norway, respectively.

<sup>31</sup> For the purposes of this paragraph, “partner” means any spouse or civil partner of an intra-corporate transferee from Iceland, Liechtenstein or Norway, respectively,, including under a marriage, civil partnership or equivalent union or partnership, recognised as such in accordance with the law of the United Kingdom. For the avoidance of doubt, this also includes any unmarried or same sex partner who, when accompanying an intra-corporate

Iceland, Liechtenstein or Norway, respectively, in the category of managers and specialists for the same period as the period of temporary stay granted to the intra-corporate transferee.

7. Unless otherwise specified in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), each Party shall allow the partners and dependent children of intra-corporate transferees referred to in subparagraphs (d)(i) and (ii) of Article 3.20 (Definitions), to work in an employed or self-employed capacity for the duration of their permitted length of stay, and shall not require them to obtain a separate work permit.
8. For the avoidance of doubt, with respect to the partners and dependent children of intra-corporate transferees, paragraphs 5 to 7 are without prejudice to the law of each Party applicable to entry and temporary stay.

#### ARTICLE 3.26

##### ***Contractual Service Suppliers and Independent Professionals***

1. Each Party shall grant entry and temporary stay to contractual service suppliers and independent professionals of another Party in accordance with Annex XIX (Contractual Service Suppliers and Independent Professionals).
2. Unless otherwise specified in Annex XIX (Contractual Service Suppliers and Independent Professionals), a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of another Party granted entry and temporary stay, in the form of numerical quotas or the requirement of an economic needs test.
3. Each Party shall accord to contractual service suppliers and independent professionals of another Party, with regard to the supply of their services in that Party, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

#### ARTICLE 3.27

##### ***Short-Term Business Visitors***

1. Each Party shall grant entry and temporary stay to short-term business visitors of another Party in accordance with Annex XVIII (Business

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transferee from Iceland, Liechtenstein or Norway, respectively, may be granted temporary entry and stay under the relevant law of United Kingdom.

<sup>32</sup> For the purposes of this paragraph, “dependent children” means children who are dependent on an intra-corporate transferee from Iceland, Liechtenstein or Norway, respectively, and recognised as such in accordance with the law of the United Kingdom.

Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term business Visitors), subject to the following conditions:

- (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;
  - (b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and
  - (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a legal person that has not established in the Party where they are staying temporarily, and a consumer there, except as provided for in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors).
2. Unless otherwise specified in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), each Party shall grant entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.
3. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the Party where they are staying temporarily in accordance with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

#### ARTICLE 3.28

##### *Non-Conforming Measures*

To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, paragraphs 3 and 4 of Article 3.25 (Business Visitors for Establishment Purposes, Intra-Corporate Transferees), paragraphs 2 and 3 of Article 3.26 (Contractual Service Suppliers and Independent Professionals), and paragraph 3 of Article 3.27 (Short-Term Business Visitors) do not apply to:

- (a) any existing non-conforming measure of a Party at the level of:
  - (i) the central government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
  - (ii) a regional government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or

- (iii) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- (c) an amendment of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with paragraphs 3 and 4 of Article 3.25 (Business Visitors for Establishment Purposes and Intra-Corporate Transferees), paragraphs 2 and 3 of Article 3.26 (Contractual Service Suppliers and Independent Professionals), or paragraph 3 of Article 3.27 (Short-Term Business Visitors); or
- (d) any measure of a Party consistent with a condition or qualification specified in Annex XVII (Future Measures).

#### ARTICLE 3.29

##### ***Contact Points***

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the effective implementation and operation of this Section and notify the other Parties of the contact details. The Parties shall promptly notify each other of any change of those contact details.

**SECTION 3.5**  
**REGULATORY FRAMEWORK**  
**SUB-SECTION 3.5.1**  
**DOMESTIC REGULATION**

ARTICLE 3.30

*Scope*

1. Subject to paragraph 2, this Sub-Section applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, formalities, and technical standards that affect:
  - (a) cross-border trade in services;
  - (b) establishment or operation; or
  - (c) the supply of a service through the presence of a natural person of a Party in another Party of categories of natural persons as defined in Article 3.19 (General Provisions and Scope) and Article 3.20 (Definitions) of Section 3.4 (Entry and Temporary Stay of Natural Persons).

As far as measures relating to technical standards are concerned, this Sub-Section only applies to measures that affect trade in services. For the purposes of this Sub-Section, the term “technical standards” does not include regulatory or implementing technical standards for financial services.

2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures, technical standards and formalities pursuant to a measure:
  - (a) that does not conform with Article 3.6 (Market Access) or Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation) and is referred to in subparagraphs 1(a) to (c) of Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation), or with Article 3.14 (Market Access) or Article 3.15 (Local Presence) or Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services) and is referred to in subparagraphs 1(a) to (c) of Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services), or with Article 3.25 (Business Visitors for Establishment Purposes and Intra-Corporate Transferees) or Article 3.26 (Contractual Service Suppliers and Independent Professionals) or

Article 3.27 (Short-Term Business Visitors) and is referred to in Article 3.28 (Non-Conforming Measures) of Section 3.4 (Entry and Temporary Stay of Natural Persons); or

- (b) referred to in paragraph 2 of Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation) or paragraph 2 of Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services).

#### ARTICLE 3.31

##### ***Definitions***

For the purposes of this Sub-Section:

- (a) “authorisation” means the permission to pursue the activities set out in subparagraphs 1(a) to (c) of Article 3.30 (Scope) resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements, technical standards or formalities for the purposes of obtaining, maintaining or renewing that permission; and
- (b) “competent authority” means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in subparagraph (a).

#### ARTICLE 3.32

##### ***Submission of Applications***

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

#### ARTICLE 3.33

##### ***Application Timeframes***

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application for authorisation at any time throughout the year. If a specific time period for applying exists, the Party shall ensure that its competent authorities allow a reasonable period of time for the submission of an application.



#### ARTICLE 3.34

##### *Electronic Applications and Acceptance of Copies*

1. If a Party requires authorisation, it shall ensure that its competent authorities:
  - (a) to the extent possible, provide for applications to be completed by electronic means, including from within another Party; and
  - (b) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

#### ARTICLE 3.35

##### *Processing of Applications*

1. If a Party requires authorisation, it shall ensure that its competent authorities:
  - (a) process applications throughout the year. Where this is not possible, this information should be made public in advance, to the extent feasible;
  - (b) at the request of the applicant, confirm in writing<sup>33</sup> that an application has been received;
  - (c) to the extent practicable, provide a fixed or indicative timeframe for processing all applications. That timeframe shall be reasonable, to the extent practicable;
  - (d) where the fixed timeframe under subparagraph (c) has been provided, notify applicants of any extensions of that timeframe;
  - (e) at the request of the applicant, provide without undue delay information concerning the status of the application;
  - (f) to the extent practicable, ascertain, without undue delay, the completeness of an application for processing under the Party's laws and regulations;
  - (g) if they consider an application complete for processing under the Party's laws and regulations, within a reasonable period of time after the submission of the application, ensure that:

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<sup>33</sup> "In writing" may include in electronic form.

- (i) where applicable, the processing of the application is completed within the stated timeframe; and
  - (ii) the applicant is informed of the decision concerning the application<sup>34</sup>, to the extent possible in writing;
- (h) if they consider an application incomplete for processing under the Party's laws and regulations, ensure that they, to the extent practicable:
  - (i) inform the applicant that the application is incomplete;
  - (ii) at the request of the applicant, identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
  - (iii) provide the applicant with the opportunity<sup>35</sup> to correct any deficiencies.

However, if it is reasonable to reject the application due to incompleteness, competent authorities shall ensure that they inform the applicant within a reasonable period of time; and

- (i) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision, and, if applicable, the procedures for resubmission of an application. An applicant shall not be prevented from submitting another application<sup>36</sup> solely on the basis of a previously rejected application.
2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, in light of an appropriate examination, that the applicant meets the conditions for obtaining it.
  3. The Parties shall ensure that their competent authorities ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.<sup>37</sup>

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<sup>34</sup> Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application.

<sup>35</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

<sup>36</sup> Competent authorities may require that the content of such an application has been revised.

<sup>37</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

## ARTICLE 3.36

### *Fees*

1. For all the activities listed under subparagraphs 1(a) to (c) of Article 3.30 (Scope), each Party shall ensure that the authorisation fees<sup>38</sup> charged by its competent authorities are reasonable and transparent and do not in themselves restrict the pursuit of those activities and, to the extent practicable, are payable by electronic means.
2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

## ARTICLE 3.37

### *Assessment of Qualifications*

If a Party requires an examination to assess the qualifications of an applicant for authorisation, it shall ensure that its competent authorities schedule that examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall ensure that its competent authorities accept requests in electronic format to take those examinations and shall consider the use of electronic means in other aspects of the examination processes.

## ARTICLE 3.38

### *Publication and Information Available*

1. If a Party requires authorisation, it shall promptly publish<sup>39</sup> the information necessary for persons pursuing or seeking to pursue the activities referred to in subparagraphs 1(a) to (c) of Article 3.30 (Scope) for which the authorisation is required to comply with the requirements, formalities, technical standards and procedures for obtaining, maintaining, amending and renewing that authorisation. This information shall include, to the extent it exists:
  - (a) the licensing and qualification requirements, procedures and formalities;

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<sup>38</sup> Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>39</sup> For the purposes of this Article, "publish" means to include in an official publication, such as an official journal, or an official website.

- (b) contact information of relevant competent authorities;
  - (c) authorisation fees;
  - (d) applicable technical standards;
  - (e) procedures for appeal or review of decisions concerning applications;
  - (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences or qualifications;
  - (g) opportunities for public involvement, such as through hearings or comments;
  - (h) fixed or indicative timeframes for the processing of an application; and
  - (i) guidance on accessing public registers and databases on providers and services.
2. The Parties shall consolidate electronic publications into a single online portal or otherwise ensure that competent authorities make them easily accessible through alternative electronic means.
3. Each Party shall require each of its competent authorities to respond to any request for information or assistance.

#### ARTICLE 3.39

##### ***Technical Standards***

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations<sup>40</sup> designated to develop technical standards, to use open and transparent processes.

#### ARTICLE 3.40

##### ***Conditions for Authorisation***

1. Each Party shall ensure that measures relating to authorisation are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

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<sup>40</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties.

2. The criteria<sup>41</sup> referred to in paragraph 1 shall be:
  - (a) objective;
  - (b) transparent;
  - (c) clear;
  - (d) impartial;
  - (e) made public in advance, to the extent practicable; and
  - (f) easily accessible.
3. If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:
  - (a) the competent authority concerned processes applications, and reaches and administers its decisions objectively and impartially and in a manner independent of the undue influence of any person carrying out the economic activity for which authorisation is required;
  - (b) the procedures themselves do not prevent fulfilment of the requirements; and
  - (c) those measures do not discriminate between men and women.<sup>42</sup>

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<sup>41</sup> Such criteria may include, but are not limited to, competence and the ability to supply a service or pursue an economic activity, including to do so in a manner consistent with the Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>42</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by the Party of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

## **SUB-SECTION 3.5.2**

### **PROVISIONS OF GENERAL APPLICATION**

#### **ARTICLE 3.41**

##### ***Review Procedures for Administrative Decisions***

Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier of another Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions<sup>43</sup> that affect the pursuit of an activity referred to in subparagraphs 1(a) to (c) of Article 3.30 (Scope). Where these procedures are not independent of the competent authority entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

#### **ARTICLE 3.42**

##### ***Opportunity to Comment Before Entry into Force***

1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party<sup>44</sup> shall publish in advance:
  - (a) any laws or regulations of general application it proposes to adopt; or
  - (b) documents that provide sufficient details about that possible new law or regulation to allow another Party to assess whether and how their interests might be significantly affected.
2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to apply paragraph 1 to procedures and administrative rulings of general application it proposes to adopt.
3. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall provide the other Parties with a reasonable opportunity to comment on those proposed measures or documents published under paragraphs 1 or 2.

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<sup>43</sup> For the purposes of this Article, “administrative decisions” means a decision or action with legal effect and covers the failure to take an administrative decision or take such action when that is so required by a Party’s law.

<sup>44</sup> The Parties understand that paragraphs 1 to 4 recognise that each Party may have different systems to consult interested persons on certain measures before they are adopted, and that the alternatives set out in subparagraphs 1(a) and (b) reflect different legal systems.

4. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall consider comments received under paragraph 3.<sup>45</sup>
5. In publishing the law or regulation referred to in subparagraph 1(a), or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Party is encouraged to explain the purpose and rationale of the law or regulation.
6. Each Party shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of the law or regulation referred to in subparagraph 1(a) and the date on which service suppliers must comply with the law or regulation.

#### ARTICLE 3.43

##### ***Regulatory Cooperation***

1. To promote further services liberalisation, the Parties shall:
  - (a) consider cooperating on regulatory issues of mutual interest by:
    - (i) discussing regulatory approaches that underpin their criteria for authorisation;
    - (ii) sharing best-practices and expertise;
    - (iii) participating in international dialogues; and
    - (iv) sharing trade-related information.
  - (b) endeavour to encourage their competent authorities to consider cooperating with competent authorities of another Party on regulatory issues of mutual interest by the same means provided in subparagraphs (a)(i) to (iv).
2. This Article shall not apply with respect to financial services.

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<sup>45</sup> This provision is without prejudice to the final decision of a Party that adopts or maintains any measure for authorisation for the supply of a service.

**SUB-SECTION 3.5.3**  
**FINANCIAL SERVICES**

ARTICLE 3.44

*Scope*

1. This Sub-Section shall apply to measures of a Party affecting the supply of financial services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. For the purposes of the application of Article 3.1 (Scope) of Section 3.1 (General Provisions) to this Sub-Section, the term “activities performed in the exercise of governmental authority” means the following:
  - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; and
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party or its public entities.
3. For the purposes of the application of Article 3.1 (Scope) of Section 3.1 (General Provisions) to this Sub-Section, if a Party allows any of the activities referred to in subparagraph 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “activities performed in the exercise of governmental authority” does not include those activities.
4. The definition of “activities performed in the exercise of governmental authority” in Section 3.1 (General Provisions) does not apply to services covered by this Sub-Section.
5. Article 3.9 (Senior Management and Boards of Directors) of Section 3.2 (Investment Liberalisation) shall not apply to measures covered by this Sub-Section.



## ARTICLE 3.45

### ***Definitions***

For the purposes of this Chapter:

- (a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

#### *Insurance and insurance-related services*

- (i) direct insurance (including co-insurance):
  - (aa) life;
  - (ab) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency; and
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

#### *Banking and other financial services (excluding insurance)*

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers’ cheques, e-payments and bankers drafts;
- (ix) guarantees and commitments;
- (x) 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);
  - (ab) foreign exchange;
  - (ac) derivative products, including futures and options;

- (ad) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
    - (ae) transferable securities; and
    - (af) other negotiable instruments and financial assets, including bullion;
  - (xi) 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;
  - (xii) money broking;
  - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
  - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), 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 a person of a Party wishing to supply or supplying financial services but does not include a public entity;
- (c) “new financial services” means a financial service not supplied in the Party that is supplied in another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party;
- (d) “public entity” means
- (i) a government, a central bank or monetary authority of a Party, or any entity owned or controlled by a Party that is principally engaged in carrying out governmental functions or activities for governmental purposes, but does not include 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; and
- (e) “self-regulatory organisations” means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central or regional government.

#### ARTICLE 3.46

##### *New Financial Services*

1. Each Party shall, in accordance with its law, permit a financial service supplier of another Party to supply a new financial service that the Party would permit its own like financial service suppliers to supply without adopting a law or modifying an existing law, in like situations.
2. A Party may determine the institutional and juridical form<sup>46</sup> through which the new financial service may be supplied and may require authorisation or its renewal for the supply of the service from the relevant regulator. Where such authorisation is required, a decision shall be made within a reasonable period of time, and the authorisation or its renewal may only be refused for prudential reasons, including if such prudential reasons arise out of the Party’s international obligations.
3. Each Party shall endeavour to collaborate and share knowledge relating to developments in financial services including financial integrity, consumer wellbeing and protection, financial inclusion, financial data, competition and financial stability through innovation in financial services, by sharing best practice and facilitating cross-border development of new financial services.
4. The Parties understand that nothing in this Article prevents a financial service supplier of a Party from applying to another Party to request that it authorises the supply of a financial service that is not supplied in any Party. That application shall be subject to the law of the Party receiving the application, and for greater certainty, shall not be subject to paragraphs 1 to 2.

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<sup>46</sup> For greater certainty, a Party may determine that the service can only be provided by an established financial service supplier.

#### ARTICLE 3.47

##### ***Financial Information and Data***

1. No Party shall restrict a financial service supplier of another Party from transferring or processing information, including by electronic means, or from transferring equipment in accordance with this Agreement and any applicable domestic laws and regulations, where such transfers or processing are necessary in the course of the business of that financial service supplier.
2. The Parties affirm that paragraph 1 of Article 4.11 (Cross-border Data Flows) of Chapter 4 (Digital Trade) applies to cross-border data transfers of financial service suppliers.
3. Notwithstanding paragraph 1 of this Article and paragraph 1 of Article 4.11 (Cross-Border Data Flows) of Chapter 4 (Digital Trade), each Party has the right to require that information of a financial service supplier is used, stored or processed in that Party where it is not able to ensure access to data required for the purposes of financial regulation and supervision. Before imposing such requirements on the financial service supplier of another Party with respect to use, storage or processing of financial information in that Party, the Party or its financial regulators shall endeavour to consult that other Party or its financial regulators and, as far as practicable, provide the financial service supplier with a reasonable opportunity to remediate any lack of access to information.
4. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures in accordance with paragraph 2 of Article 4.12 (Protection of Personal Data and Privacy) of Chapter 4 (Digital Trade).

#### ARTICLE 3.48

##### ***Payments and Clearing***

Under terms and conditions that accord national treatment under Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services), each Party shall grant to established financial service suppliers of another Party 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 Article shall not confer access to the Party's lender of last resort facilities.

#### ARTICLE 3.49

##### ***Senior Management and Boards of Directors***

1. No Party shall require established financial service suppliers of another Party to engage natural persons of any particular nationality as members of the board of directors, senior managerial or other essential personnel.
2. No Party shall require that more than a minority of the board of directors of established financial service suppliers of another Party be composed of persons residing in that Party.
3. This Article is subject to each Party's reservations as set out in Annex XVI (Existing Measures) and Annex XVII (Future Measures).

#### ARTICLE 3.50

##### ***Self-Regulatory Organisations***

If a Party requires a financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 3.6 (Market Access), Article 3.7 (National Treatment) and Article 3.8 (Most-Favoured Nation Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.14 (Market Access), Article 3.16 (National Treatment) and Article 3.17 (Most-Favoured Nation Treatment) of Section 3.3 (Cross-Border Trade in Services).

#### ARTICLE 3.51

##### ***Prudential Carve-Out***

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons<sup>47</sup>, including:
  - (a) the protection of investors, depositors, policyholders, or persons to whom a financial service supplier owes a fiduciary duty;
  - (b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier; or
  - (c) ensuring the integrity and stability of the Party's financial system.

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<sup>47</sup> For greater certainty, this shall not prevent a Party from adopting or maintaining measures for prudential reasons in relation to branches established in that Party by legal persons in another Party.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

#### ARTICLE 3.52

##### ***Confidential Information***

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

#### ARTICLE 3.53

##### ***International Standards***

Each Party shall make its best endeavour 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 that Party. Such internationally agreed standards are, inter alia, the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors, the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the Financial Action Task Force's "FATF Recommendations" and the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD.

#### ARTICLE 3.54

##### ***Recognition of Prudential Measures***

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Sub-Section.<sup>48</sup> That recognition may be:
  - (a) accorded autonomously;
  - (b) achieved through harmonisation or other means; or
  - (c) based upon an agreement or arrangement with a non-Party.
2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation,

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<sup>48</sup> For greater certainty, nothing in Article 3.8 (Most-Favoured-Nation Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.17 (Most-Favoured-Nation Treatment) of Section 3.3 (Cross-Border Trade in Services) shall be construed to require a Party to accord recognition to prudential measures of another Party.

oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under subparagraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

## **SUB-SECTION 3.5.4**

### **TELECOMMUNICATIONS SERVICES**

#### **ARTICLE 3.55**

##### ***Scope***

1. This Sub-Section applies to measures of a Party affecting the supply of telecommunications services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. This Sub-Section does not apply to:
  - (a) measures affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services; or
  - (b) measures relating to broadcast or cable distribution of radio or television programming, except to ensure that a service supplier operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services.

#### **ARTICLE 3.56**

##### ***Definitions***

For the purposes of this Sub-Section:

- (a) “associated facilities” means those services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services via that network or service or have the potential to do so;
- (b) “end-user” means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;
- (c) “essential facilities” means facilities of a public telecommunications network or service that:
  - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and



- (ii) cannot feasibly be economically or technically substituted in order to supply a service;
- (d) “interconnection” means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;
- (e) “international mobile roaming service” means a mobile service provided pursuant to an agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in a Party to use their mobile handset or other device for voice, data or messaging services in another Party;
- (f) “leased circuit” means telecommunications services or facilities, including those of a virtual or non-physical nature, between two or more designated points that are set aside for the dedicated use of, or availability to, a user;
- (g) “major supplier” means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
- (h) “network element” means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (i) “non-discriminatory” means treatment no less favourable than that accorded, in like situations, to other service suppliers and users of like public telecommunications networks or services;
- (j) “number portability” means the ability of end-users who so request to retain the same telephone numbers, at the same location in the case of a fixed line, when switching between the same category of suppliers of public telecommunications services;
- (k) “public telecommunications network” means any telecommunications network used for the provision of public telecommunications services between network termination points;
- (l) “public telecommunications service” means any telecommunications service that is offered to the public generally;

- (m) “reference interconnection offer” means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;
- (n) “telecommunications” means the transmission and reception of signals by any electromagnetic means;
- (o) “telecommunications network” means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (p) “telecommunications regulatory authority” means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Sub-Section;
- (q) “telecommunications service” means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, including over networks used for broadcasting, but does not include a service providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
- (r) “universal service” means the minimum set of services that must be made available to all users in a Party; and
- (s) “user” means a service consumer or a service supplier using a public telecommunications network or service.

#### ARTICLE 3.57

##### *Access and Use*

1. Each Party shall ensure that any covered enterprise or service supplier of another Party is accorded access to and use of public telecommunications networks or services, including private leased circuits, offered in that Party or across its borders on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, to paragraphs 2 to 6.
2. Each Party shall ensure that covered enterprises or service suppliers of another Party are permitted:
  - (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;

- (b) to interconnect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another covered enterprise or service supplier; and
  - (c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of public telecommunications services.
- 3. Each Party shall ensure that covered enterprises or service suppliers of another Party may use public telecommunications networks and services for the movement of information in that Party or across its borders, including for their intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the Party.
- 4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.
- 5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services other than as necessary:
  - (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available; or
  - (b) to protect the technical integrity of public telecommunications networks or services.
- 6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:
  - (a) restrictions on resale or shared use of such services;
  - (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
  - (c) a requirement, if necessary, for the interoperability of such services;
  - (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
  - (e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

- (f) notification, registration and licensing.

#### ARTICLE 3.58

##### ***Access to Major Suppliers' Essential Facilities***

Each Party shall ensure that a major supplier in that Party grants access to its essential facilities to suppliers of telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the Party's telecommunications regulatory authority. The major supplier's essential facilities may include, *inter alia*, network elements, leased circuit services and associated facilities.

#### ARTICLE 3.59

##### ***Interconnection***

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

#### ARTICLE 3.60

##### ***Interconnection with Major Suppliers***

1. Each Party shall ensure that a major supplier of public telecommunications networks or services in that Party provides interconnection:
  - (a) at any technically feasible point in the major supplier's network;
  - (b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the major supplier's own like services, or for like services of its subsidiaries or other affiliates;
  - (c) on a timely basis, and on terms, conditions (including technical standards and specifications) and rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier does not need to pay for network components or facilities that it does not require for the service to be provided; and

- (d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- 2. Each Party shall ensure that major suppliers in that Party make publicly available, as appropriate:
  - (a) a reference interconnection offer or other standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
  - (b) the terms and conditions of an interconnection agreement in effect.
- 3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in that Party.

#### ARTICLE 3.61

##### ***Number Portability***

Each Party shall ensure that suppliers of public telecommunications services provide number portability on a timely basis, without impairment of quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

#### ARTICLE 3.62

##### ***Scarce Resources***

- 1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives, including the promotion of competition. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.
- 2. Each Party shall make publicly available the current use of allocated frequency bands, but detailed identification of radio spectrum allocated for specific government uses is not required.
- 3. Each Party may rely on market-based approaches, such as bidding procedures, to assign spectrum for commercial use.
- 4. A measure of a Party allocating and assigning spectrum and managing frequency is not per se inconsistent with Article 3.6 (Market Access) of Section 3.2 (Investment Liberalisation) and Article 3.14 (Market Access) of

Section 3.3 (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

#### ARTICLE 3.63

##### ***Competitive Safeguards on Major Suppliers***

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.
2. The anticompetitive practices referred to in paragraph 1 include:
  - (a) engaging in anticompetitive cross-subsidisation;
  - (b) using information obtained from competitors with anticompetitive results; and
  - (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

#### ARTICLE 3.64

##### ***Treatment by Major Suppliers***

Each Party shall provide its telecommunications regulatory authority with the power to require, if appropriate, that a major supplier in that Party accords suppliers of public telecommunications networks or services of another Party treatment no less favourable than the major supplier accords, in like situations, to its subsidiaries or affiliates regarding:

- (a) the availability, provisioning, rates or quality of like telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

## ARTICLE 3.65

### *Telecommunications Regulatory Authority*

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct from, and functionally independent to any supplier of telecommunications networks, equipment and services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications services, networks or equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory authority or other competent authority are impartial with respect to all market participants.
3. Each Party shall ensure that its telecommunications regulatory authority acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under the Party's law to enforce the obligations set out in this Sub-Section concerning obligations relating to that Party's telecommunications service suppliers.<sup>49</sup>
4. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this Sub-Section. Such power shall be exercised transparently and in a timely manner.
5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly on request, with all the information, including financial information, which is necessary to enable it to carry out its tasks in accordance with this Sub-Section. Information requested shall be treated in accordance with the Party's requirements of confidentiality.
6. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the Party's telecommunications regulatory authority has a right to appeal before an appeal body that is independent of the telecommunications regulatory authority and of the user or supplier affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory

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<sup>49</sup> For greater certainty, this paragraph shall not apply to measures of a Party allocating and assigning spectrum and managing frequency referred to in paragraph 4 of Article 3.62 (Scarce Resources).

authority shall stand, unless interim measures are granted in accordance with the Party's law.

7. Each Party shall ensure that:
  - (a) its telecommunications regulatory authority reports annually, *inter alia*, on the state of the electronic communications market, on the decisions they issue, on their human and financial resources and how those resources are attributed, as well as on future plans; and
  - (b) the report referred to in subparagraph (a) is made publicly available.

#### ARTICLE 3.66

##### ***Authorisation to Provide Telecommunications Networks or Services***

1. Each Party shall permit the provision of telecommunications networks or telecommunications services without a prior formal authorisation.
2. Each Party shall make publicly available all the criteria, applicable procedures and terms and conditions under which suppliers are permitted to provide telecommunications networks or telecommunications services.
3. Each Party shall ensure that:
  - (a) any authorisation criteria and applicable procedures are as simple as possible, objective, transparent, non-discriminatory and proportionate; and
  - (b) any obligations and conditions imposed on or associated with an authorisation are non-discriminatory, transparent, proportionate and related to the services or networks provided.
4. Each Party shall ensure that an applicant for an authorisation receives in writing the reasons for the denial or revocation of the authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.
5. Each Party shall ensure that administrative fees imposed on suppliers are objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Sub-Section. Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.



## ARTICLE 3.67

### ***Transparency***

To the extent not already provided for in this Agreement, each Party shall make each of the following, to the extent it exists, publicly available:

- (a) the responsibilities of its telecommunications regulatory authority in an easily accessible and clear form;
- (b) those measures it adopts or maintains relating to public telecommunications networks or services, including:
  - (i) regulations of its telecommunications regulatory authority, together with the basis for these regulations;
  - (ii) tariffs and other terms and conditions of services, except in circumstances otherwise provided for in its laws, regulations and decisions of its telecommunications regulatory authority;
  - (iii) specifications of technical interfaces;
  - (iv) conditions for attaching terminal or other equipment to the public telecommunications networks; and
  - (v) notification, permit, registration or licensing requirements; and
- (c) information on bodies responsible for preparing, amending and adopting standards-related measures.

## ARTICLE 3.68

### ***Universal Service Obligation***

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. Each Party shall administer any universal service obligation that it maintains in a manner that is transparent, non-discriminatory and neutral with respect to competition. Each Party shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not be regarded per se as anticompetitive.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate a universal service supplier, it shall ensure that such compensation does not exceed the needs directly attributable to the universal service obligation, as determined through a competitive process or a determination of net costs.

#### ARTICLE 3.69

##### ***International Mobile Roaming Services<sup>50</sup>***

1. The Parties recognise the importance of international mobile roaming services for enhancing consumer welfare and promoting the growth of trade between the Parties.
2. With a view to facilitating surcharge-free international mobile roaming for end-users of each Party, the maximum rates that a supplier of public telecommunications services of a Party may levy on a supplier of public telecommunications services of another Party for the provision of wholesale international mobile roaming services (IMRS Rates) shall be the IMRS rates specified in Annex XX.
3. The Sub-Committee on Services and Investment shall, within a reasonable period of time, make a recommendation to the Joint Committee concerning the adoption, by amending Annex XX, of the IMRS rates the Sub-Committee on Services and Investment considers appropriate, provided that those rates are:
  - (a) reasonable and reciprocal; and
  - (b) based on the cost to suppliers of a Party of supplying wholesale international mobile roaming services to suppliers of the other Parties, which may include a reasonable profit.
4. The Sub-Committee on Services and Investment, in making its recommendation:
  - (a) shall take into account relevant international benchmarks;
  - (b) may consult with the telecommunications regulatory authority of each Party by any means it considers appropriate; and
  - (c) may adopt its own rules of procedure for determining the IMRS rates.
5. The Sub-Committee on Services and Investment shall review the IMRS rates in Annex XX every two years, unless it otherwise decides, with a view to determining whether those rates are still appropriate. The review shall consider, *inter alia*, the implementation and effect of the IMRS rates, particularly for consumers and suppliers of public telecommunications

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<sup>50</sup> This Article shall not apply to Liechtenstein.

services of each Party, and the views of each Party's telecommunications regulatory authority. Following a review, the Sub-Committee on Services and Investment may make a recommendation to the Joint Committee, in accordance with paragraphs 3 and 4, that the IMRS rates be modified.

6. Each Party shall monitor the rates for retail international mobile roaming services offered by suppliers of public telecommunication services in that Party and may take such measures it considers necessary to facilitate surcharge-free international mobile roaming for end-users of the Party when roaming in another Party.
7. For greater certainty, this Article does not prevent:
  - (a) a supplier of public telecommunications services of a Party from applying a "fair use" policy for the provision of retail international mobile roaming services; or
  - (b) a Party from adopting or maintaining measures to prohibit permanent international mobile roaming services.
8. The Sub-Committee on Services and Investment shall review the implementation and functioning of this Article within three years of entry into force of this Agreement.

#### ARTICLE 3.70

##### ***Dispute Resolution***

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with the rights and obligations that arise from this Sub-Section, and at the request of either supplier involved in the dispute, its telecommunications regulatory authority issues a binding decision within the timeframe stipulated in the Party's law to resolve the dispute.
2. Each Party shall ensure that if its telecommunications regulatory authority declines to initiate any action on a request to resolve a dispute, the telecommunications regulatory authority shall, upon request, provide a written explanation for its decision within a reasonable period of time.
3. Each Party shall ensure that a decision issued by its telecommunications regulatory authority is made publicly available, having regard to the requirements of business confidentiality.
4. Each Party shall ensure that the suppliers involved in the dispute:
  - (a) are given a full statement of the reasons on which the decision is based; and

- (b) may appeal the decision, in accordance with paragraph 6 of Article 3.65 (Telecommunications Regulatory Authority).
- 5. For greater certainty, the procedure referred to in paragraphs 1 and 2 shall not preclude a supplier of telecommunications networks or services involved in a dispute from bringing an action before a judicial authority.

#### ARTICLE 3.71

##### ***Confidentiality***

- 1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Article 3.57 (Access and Use), Article 3.58 (Access to Major Suppliers' Essential Facilities), Article 3.59 (Interconnection) and Article 3.60 (Interconnection with Major Suppliers) use that information solely for the purpose for which it was supplied and respect, at all times, the confidentiality of information transmitted or stored.
- 2. Each Party shall ensure, in accordance with its law, the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

### **SUB-SECTION 3.5.5:**

## **INTERNATIONAL MARITIME TRANSPORT SERVICES**

### ARTICLE 3.72

#### ***Scope and Definitions***

1. This Sub-Section shall apply to measures of a Party affecting the supply of international maritime transport services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. For the purposes of this Sub-Section, Sub-Section 3.5.1 (Domestic Regulation) of this Section and Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter:
  - (a) “container station and depot services” means activities consisting in storing, stuffing, stripping or repairing of containers and making containers available for shipment, whether in port areas or inland;
  - (b) “customs clearance services” means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether these services are the main activity of the service supplier or a usual complement of its main activity;
  - (c) “door-to-door or multimodal transport operations” means the transport of cargo using more than one mode of transport, that includes an international sea-leg, under a single transport document;
  - (d) “feeder services” means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in a Party, provided such international cargo is “*en route*”, that is, directed to a destination, or coming from a port of shipment, outside of that Party;
  - (e) “international cargo” means cargo transported between a port of one Party and a port of another Party or of a non-Party;
  - (f) “international maritime transport services” means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of another Party or of a non-Party, including the direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a

single transport document, but does not include the right to provide such other transport services;

- (g) “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:
  - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, issuance of bills of lading on behalf of the shipping lines or shipping companies, acquisition and resale of the necessary related services, preparation of documentation and provision of business information; and
  - (ii) acting on behalf of the shipping lines or shipping companies organising the call of the ship or taking over cargoes when required;
- (h) “maritime auxiliary services” means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services and storage and warehousing services;
- (i) “maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers if the workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
  - (i) the loading or discharging of cargo to or from a ship;
  - (ii) the lashing or unlashings of cargo; and
  - (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;
- (j) “maritime freight forwarding services” means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the arrangement of transport and related services, preparation of documentation and provision of business information;
- (k) “port services” means services provided inside a maritime port area or on the waterway access to such area by the managing body of a port, its subcontractors, or other service providers to support the transport of cargo or passengers; and
- (l) “storage and warehousing services” means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and other storage or warehousing services.

## ARTICLE 3.73

### *Obligations*

1. Without prejudice to non-conforming measures or other measures referred to in Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation) and Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services), each Party shall implement the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis by:
  - (a) according to ships flying the flag of another Party, or operated by international maritime transport service suppliers of another Party, treatment no less favourable than that accorded to its own ships or ships of a non-Party, with regard to, *inter alia*:
    - (i) access to ports;
    - (ii) the use of port infrastructure;
    - (iii) the use of maritime auxiliary services; and
    - (iv) customs facilities and the assignment of berths and facilities for loading and unloading;including related fees and charges;
  - (b) making available to international maritime transport service suppliers of another Party on terms and conditions which are both reasonable and no less favourable than those applicable to its own suppliers or vessels or to vessels or suppliers of a non-Party (including fees and charges, specifications and quality of the service to be provided), the following port services: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth, berthing and unberthing services and shore-based operational services essential to ship operations, including communications, water and electrical supplies;
  - (c) permitting international maritime transport service suppliers of another Party to re-position owned or leased empty containers, which are not being carried as cargo against payment, between ports of that Party; and
  - (d) permitting international maritime transport service suppliers of another Party to provide feeder services between their national ports.
2. In applying the principle referred to in paragraph 1, a Party shall not:

- (a) introduce cargo-sharing arrangements in future agreements with non-Parties concerning maritime transport services, including dry and liquid bulk and liner trade, and shall terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements;
- (b) adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by natural persons of that Party;
- (c) introduce unilateral measures or administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of international maritime transport services, and that Party shall remove any such measures or administrative, technical and other obstacles should they already exist; or
- (d) prevent international maritime transport service suppliers of another Party from directly contracting with other transport service suppliers for door-to-door or multimodal transport operations.



## SUB-SECTION 3.5.6

### LEGAL SERVICES

#### ARTICLE 3.74

##### *Scope*

1. This Sub-Section applies to measures of a Party affecting the supply of designated legal services by a lawyer of the other Party, in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services and Entry and Temporary Stay of Natural Persons) of this Chapter, and Sub-Sections 3.5.1 (Domestic Regulation) and 3.5.2 (Provisions of General Application) of this Section.
2. This Sub-Section applies without prejudice to the other rights and obligations of the Parties under this Agreement, including with regard to any non-conforming measures.<sup>51</sup>

#### ARTICLE 3.75

##### *Definitions*

1. For the purposes of this Sub-Section:
  - (a) “CPC” means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);
  - (b) “designated legal services” means legal services in relation to home jurisdiction law and international law;
  - (c) “home jurisdiction” means the jurisdiction (or part thereof) of the Party in which a lawyer acquired a home jurisdiction professional title;
  - (d) “home jurisdiction law” means the law of the lawyer’s home jurisdiction;
  - (e) “home jurisdiction professional title” means the professional title listed in the second column of the following table acquired by a lawyer in the jurisdiction (or part thereof) of the corresponding Party

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<sup>51</sup> For the avoidance of doubt, this Sub-Section applies without prejudice to the rights and obligations of the Parties in respect of members of the professions Lögmaður, Rechtsanwalt, Advokat or Advocate, Barrister or Solicitor under Chapter 12 (Recognition of Professional Qualifications).

listed in column one of that table and authorising the supply of legal services in that jurisdiction (or part thereof):

Party (Home jurisdiction)	Home jurisdiction professional title
Iceland	Lögmaður
Liechtenstein	Rechtsanwalt
Norway	Advokat
United Kingdom	Advocate/Barrister/Solicitor

- (f) “lawyer” means a natural person of a Party who is authorised in a Party to supply legal services under a home jurisdiction professional title;
- (g) “lawyer of the other Party” means:
  - (i) where “the other Party” is Iceland, Liechtenstein or Norway, a lawyer who acquired a home jurisdiction professional title in Iceland, Liechtenstein or Norway;
  - (ii) where “the other Party” is the United Kingdom, a lawyer who acquired a home jurisdiction professional title in any part of the jurisdiction of the United Kingdom;
- (h) “legal services” means the same as in CPC 861 but excluding:
  - (i) legal representation before administrative agencies, the courts and other duly constituted official tribunals of a Party; and
  - (ii) legal advisory and legal documentation and certification services that may only be supplied within a Party by a legal professional entrusted with public functions such as notaries, and services supplied by bailiffs.

#### ARTICLE 3.76

##### ***Obligations***

1. A Party shall allow a lawyer of the other Party to supply designated legal services under a home jurisdiction professional title and shall not impose disproportionately complex or burdensome administrative or regulatory conditions on or for the provision of such services.

2. Paragraph 3 applies to the supply of designated legal services, pursuant to paragraph 1, through:
  - (a) the cross-border trade in services; or
  - (b) the entry and temporary stay of natural persons of a Party in the other Party.
3. A Party (the host jurisdiction) shall not adopt or maintain measures that impose any requirement that a lawyer of the other Party, as a condition for supplying designated legal services, must:
  - (a) register with the relevant competent authority or professional body responsible for the regulation of legal services in the host jurisdiction; or
  - (b) be a member of a professional body in the host jurisdiction.
4. Where a Party (the host jurisdiction) requires a lawyer of the other Party to register with a competent authority or professional body responsible for the regulation of legal services in the host jurisdiction as a condition of that lawyer supplying designated legal services in the host jurisdiction, in circumstances other than those set out in paragraph 2, the requirements or process for such registration shall:
  - (a) accord treatment no less favourable than those which apply to a natural person who is supplying legal services in relation to the law of a non-Party or international law under that person's non-Party professional title in the host jurisdiction; and
  - (b) not amount to or be equivalent to any requirement to requalify into or be admitted to the legal profession of the host jurisdiction.
5. A Party (the host jurisdiction) shall allow a legal person of the other Party to establish a branch in the host jurisdiction through which designated legal services are supplied pursuant to paragraph 1, in accordance with and subject to the conditions set out in Section 3.2 (Investment Liberalisation) of this Chapter.

#### ARTICLE 3.77

##### *Non-Conforming Measures*

1. The provisions of this Sub-Section shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);

- (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the provisions of this Sub-Section.
2. The provisions of this Sub-Section shall not apply to any measure of a Party that are consistent with the reservations, conditions or qualifications specified with respect to a sector, sub-sector or activity, as set out by that Party in its Schedule to Annex XVII (Future Measures).
3. This Sub-Section applies without prejudice to Annex XIX (Contractual Service Suppliers and Independent Professionals).

## **CHAPTER 4**

### **DIGITAL TRADE**

#### ARTICLE 4.1

##### ***Objectives***

1. The Parties recognise the economic growth and opportunities provided by digital trade and the importance of adopting or maintaining frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development.
2. The Parties recognise the importance of the principle of technological neutrality in digital trade.

#### ARTICLE 4.2

##### ***Definitions***

For the purposes of this Chapter:

- (a) “computing facilities” means a computer server or storage device for processing or storing information for commercial use;
- (b) “electronic authentication” means an electronic process that enables the confirmation of:
  - (i) the electronic identification of a person; or
  - (ii) the origin and integrity of data in electronic form;
- (c) “electronic registered delivery service” means a service that makes it possible to transmit data between persons by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage or any unauthorised alterations;
- (d) “electronic seal” means data in electronic form used by a legal person which is attached to or logically associated with other data in electronic form to ensure the latter’s origin and integrity;
- (e) “electronic signature” means data in electronic form which is attached to or logically associated with other data in electronic form that is:

- (i) used by a natural person to agree on the data in electronic form to which it relates; and
  - (ii) linked to the data in electronic form to which it relates in such a way that any subsequent alteration in the data is detectable;
- (f) “electronic time stamp” means data in electronic form which binds other data in electronic form to a particular time establishing evidence that the latter data existed at that time;
- (g) “electronic trust service” means an electronic service consisting of:
  - (i) the creation, verification and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services and certificates related to those services;
  - (ii) the creation, verification and validation of certificates for website authentication; or
  - (iii) the preservation of electronic signatures, seals or certificates related to those services;
- (h) “emerging technology” means an enabling and innovative technology that has potentially significant application across a wide range of existing and future sectors, including:
  - (i) artificial intelligence;
  - (ii) distributed ledger technologies;
  - (iii) quantum technologies;
  - (iv) immersive technologies; and
  - (v) the Internet of Things;
- (i) “end-user” means a natural person, or legal person to the extent provided for in a Party’s law, using or requesting a public telecommunications service, either as a consumer or for trade, business or professional purposes;
- (j) “government data” means data owned or held by any level of government and by non-governmental bodies in the exercise of powers conferred on them by any level of government;
- (k) “legal 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;

- (l) “measures of a Party” means measures adopted or maintained by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (m) “person” means a natural person or a legal person;
- (n) “personal data” means any information about an identified or identifiable natural person;
- (o) “public telecommunications service” means any telecommunications service that is offered to the public generally; and
- (p) “unsolicited commercial electronic message” means an electronic message<sup>52</sup> which is sent for commercial or marketing purposes, without the consent or despite the explicit rejection of the recipient, directly to an end-user via a public telecommunications service.

#### ARTICLE 4.3

##### *Scope*

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.
2. This Chapter does not apply to:
  - (a) audio-visual services;
  - (b) gambling services;
  - (c) government procurement, except for Article 4.5 (Electronic Contracts) and Article 4.6 (Electronic Authentication and Electronic Trust Services); and
  - (d) except for Article 4.14 (Open Government Data), information held or processed by or on behalf of a Party, or measures of a Party related to that information, including measures related to its collection.

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<sup>52</sup> For greater certainty, an electronic message includes electronic mail and text (Short Message Service) and multimedia (Multimedia Message Service) messages.

#### ARTICLE 4.4<sup>53</sup>

##### ***Customs Duties***

1. A Party shall not impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of another Party.
2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that those taxes, fees or charges are imposed in a manner consistent with this Agreement.

#### ARTICLE 4.5

##### ***Electronic Contracts***

Except as otherwise provided for in its law, a Party shall not adopt or maintain measures that:

- (a) deprive an electronic contract of legal effect, enforceability or validity, solely on the ground that the contract has been made by electronic means; or
- (b) otherwise create obstacles for the use of electronic contracts.

#### ARTICLE 4.6

##### ***Electronic Authentication and Electronic Trust Services***

1. A Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, an electronic time stamp, the authenticating data resulting from electronic authentication, or of data sent and received using an electronic registered delivery service, solely on the ground that it is in electronic form.
2. A Party shall not adopt or maintain measures that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
  - (b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic

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<sup>53</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Article shall not apply to Liechtenstein.



authentication or an electronic trust service in that transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication or electronic trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent and non-discriminatory and shall only relate to the specific characteristics of the category of transactions concerned.
4. In accordance with their respective international obligations, the Parties shall encourage the use of interoperable electronic trust services and electronic authentication, and the mutual recognition of electronic trust services and electronic authentication issued by a recognised provider of electronic trust services.

#### ARTICLE 4.7<sup>54</sup>

##### ***Paperless Trading***

1. The Parties affirm their commitments under Article 2.53 (Data, Documentation and Automation) of Section 2.4 (Customs and Trade Facilitation).
2. The Parties shall encourage their competent authorities and other relevant bodies to cooperate on matters related to paperless trading, such as the standardisation of trade administration documents.
3. In developing initiatives concerning the use of paperless trading, the Parties shall endeavour to take into account the principles and guidelines of relevant international bodies.

#### ARTICLE 4.8

##### ***Online Consumer Protection***

1. Each Party shall adopt or maintain measures that contribute to online consumer trust, including laws and regulations that proscribe unfair, misleading, fraudulent and deceptive commercial practices that cause harm or potential harm to consumers.
2. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to digital trade between the Parties in order to enhance consumer welfare.

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<sup>54</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Article shall not apply to Liechtenstein.

#### ARTICLE 4.9

##### *Unsolicited Commercial Electronic Messages*

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
  - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or
  - (b) require the consent, as specified according to its law, of recipients to receive commercial electronic messages.
2. Each Party shall require suppliers of unsolicited commercial electronic messages to ensure that these messages are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any time.
3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

#### ARTICLE 4.10

##### *Source Code*

1. A Party shall not require the transfer of, or access to, source code of software owned by a person of another Party as a condition for the import, distribution, sale or use of that software, or of a product containing that software, in that Party.
2. Paragraph 1 does not apply to the voluntary transfer of, or grant of access to, source code of software by a person of another Party:
  - (a) under open source licences, such as in the context of open source coding; or
  - (b) on a commercial basis, such as in the context of a freely negotiated contract.
3. Nothing in this Article shall preclude a regulatory body or judicial authority of a Party, or a Party with respect to a conformity assessment body, from requiring a person of another Party:

- (a) to preserve and make available<sup>55</sup> source code of software for an investigation, inspection, examination, enforcement action or a judicial proceeding, or the monitoring of compliance with codes of conduct and other standards, subject to safeguards against unauthorised disclosure; and
- (b) to transfer or provide access to source code of software for the purpose of the imposition and enforcement of a remedy granted in accordance with that Party's law following an investigation, inspection, examination, enforcement action or a judicial proceeding.

#### ARTICLE 4.11

##### ***Cross-Border Data Flows***

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between the Parties by a Party:
  - (a) requiring the use of computing facilities or network elements in that Party for processing, including by imposing the use of computing facilities or network elements that are certified or approved in that Party;
  - (b) requiring the localisation of data in the Party for storage or processing;
  - (c) prohibiting the storage or processing of data in another Party; or
  - (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the Parties or upon localisation requirements in the Parties.
2. The Parties shall keep the implementation of this provision under review and assess its functioning within three years of the date of entry into force of this Agreement. A Party may at any time propose that the Parties review the list of restrictions listed in paragraph 1. Such a request shall be accorded sympathetic consideration.

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<sup>55</sup> The Parties understand that this making available shall not be construed to negatively affect the status of the source code of software as a trade secret.

#### ARTICLE 4.12

##### ***Protection of Personal Data and Privacy***

1. The Parties recognise that individuals have a right to the protection of personal data and privacy and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of the Party provides for instruments enabling transfers under conditions of general application<sup>56</sup> for the protection of the data transferred.
3. Each Party shall inform the other Parties about any measure referred to in paragraph 2 that it adopts or maintains.

#### ARTICLE 4.13

##### ***Open Internet Access***

Subject to their applicable policies, laws and regulations, each Party should adopt or maintain appropriate measures to ensure that end-users in that Party may:

- (a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable, transparent and non-discriminatory network management;
- (b) connect devices of their choice to the Internet, provided that these devices do not harm the network; and
- (c) access information on the network management practices of their Internet access service supplier.

#### ARTICLE 4.14

##### ***Open Government Data***

1. The Parties recognise that facilitating public access to and use of government data fosters economic and social development, competitiveness and innovation.
2. To the extent that a Party chooses to make government data available to the public, it shall endeavour to ensure that the data is in a machine-readable

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<sup>56</sup> For greater certainty, “conditions of general application” refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

and open format and can be searched, retrieved, used, reused and redistributed.

3. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to and the use of government data that the Party has made available to the public, with a view to enhancing and generating business opportunities, especially for small and medium-sized enterprises.

#### ARTICLE 4.15

##### ***Cybersecurity***

1. The Parties recognise that threats to cybersecurity undermine confidence in digital trade.

Accordingly, the Parties shall endeavour to:

- (a) build the capabilities of their respective national entities responsible for cybersecurity incident response, taking into account the evolving nature of cybersecurity threats;
  - (b) establish, or strengthen existing, collaboration mechanisms for cooperating to anticipate, identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents; and
  - (c) maintain a dialogue on matters related to cybersecurity, including for the sharing of information and experiences for awareness and best practices in respect of risk-based approaches to addressing cybersecurity threats.
2. Given the evolving nature of cybersecurity threats, the Parties recognise that risk-based approaches may be more effective than prescriptive approaches in addressing those threats. Accordingly, each Party shall endeavour to encourage legal persons within its jurisdiction to use risk-based approaches to protect against cybersecurity risks.

#### ARTICLE 4.16

##### ***Cooperation on Regulatory Issues with Regard to Digital Trade***

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora, including the WTO, to promote the development of international frameworks for digital trade.
2. The Parties shall endeavour to cooperate on regulatory matters of mutual interest in the context of digital trade, including:

- (a) the recognition and facilitation of interoperable electronic authentication and electronic trust services;
- (b) the treatment of unsolicited commercial electronic messages;
- (c) the conclusion and use of electronic contracts; and
- (d) the protection of consumers.

#### ARTICLE 4.17

##### ***Emerging Technology Dialogue***

1. The Parties recognise the importance of:
  - (a) emerging technology as a contributor to economic growth and quality of life;
  - (b) developing standards relating to emerging technology;
  - (c) promoting public trust in the development and use of emerging technology;
  - (d) facilitating and promoting investment in emerging technology research and development;
  - (e) training workforces to use emerging technology; and
  - (f) collaboration between government and non-governmental entities in relation to the development, use and regulation of emerging technology.
2. The Parties shall establish a strategic dialogue on emerging technology (Dialogue), which shall meet as decided by the Parties. The Parties shall, through the Dialogue, endeavour to:
  - (a) cooperate on issues and developments relating to emerging technology, such as ethical use, human diversity and unintended biases, technical standards and algorithmic transparency;
  - (b) exchange information, and share experiences and best practices on laws, regulations, policies, enforcement and compliance relating to emerging technology;
  - (c) promote collaboration between government and non-governmental entities of the Parties in relation to investment, research and development opportunities in emerging technology;

- (d) promote the involvement of non-governmental persons or groups in the Dialogue; and
- (e) discuss any other matter related to this Article they consider appropriate.

## **CHAPTER 5**

### **CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS<sup>57</sup>**

#### ARTICLE 5.1

##### ***Objectives***

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Agreement.

#### ARTICLE 5.2

##### ***Current Account***

Each Party shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

#### ARTICLE 5.3

##### ***Capital Movements***

1. Each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Chapter 3 (Services and Investment).
2. The Parties shall consult each other in the Sub-Committee on Services and Investment, to facilitate the movement of capital between them in order to promote trade and investment.

#### ARTICLE 5.4

##### ***Measures Affecting Capital Movements, Payments or Transfers***

1. Articles 5.2 (Current Account) and 5.3 (Capital Movements) shall not be construed as preventing a Party from applying its law relating to:
  - (a) bankruptcy, insolvency, or the protection of the rights of creditors;

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<sup>57</sup> The provisions of this Chapter shall apply to Liechtenstein to the extent of its competences under the Currency Treaty between the Principality of Liechtenstein and the Swiss Confederation done at Bern on 19 June 1980.



- (b) issuing, trading or dealing in securities, or futures, options and other financial instruments;
  - (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences, deceptive or fraudulent practices;
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
  - (f) social security, public retirement or compulsory savings schemes.
2. The law referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

#### ARTICLE 5.5

##### ***Restrictions in Case of Balance of Payments and External Financial Difficulties***

1. If a Party experiences serious balance of payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.<sup>58</sup>
2. The measures referred to in paragraph 1 shall:
  - (a) be consistent with the Articles of Agreement of the International Monetary Fund;
  - (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
  - (c) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
  - (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties; and
  - (e) be non-discriminatory as compared with third countries in like situations.
3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of

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<sup>58</sup> For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

payments. Those measures shall be in accordance with GATT 1994 and the Understanding on the Balance of Payments provisions of the GATT 1994.

4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATS.
5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Parties in writing, along with the rationale for their imposition, within 30 days of their adoption or maintenance.
6. If a Party adopts or maintains restrictions under this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment unless consultations are held in other fora. That Sub-Committee shall assess the balance of payments or external financial difficulties that led to the respective measures, taking into account factors such as:
  - (a) the nature and extent of the difficulties;
  - (b) the external economic and trading environment; and
  - (c) alternative corrective measures which may be available.
7. The consultations under paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of a statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.

## **CHAPTER 6**

### **GOVERNMENT PROCUREMENT**

#### ARTICLE 6.1

##### ***Scope and Coverage***

1. The provisions of the WTO Revised Agreement on Government Procurement (2012) (GPA), specified in Appendix 1 to Annex XXI (Government Procurement) to this Agreement, including the Annexes of each Party to Appendix 1 to the GPA, are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of this Chapter, “covered procurement” means procurement to which Article II of the GPA applies and, in addition, procurement listed in Appendix 2 to Annex XXI (Government Procurement) to this Agreement.
3. With regard to covered procurement, each Party shall apply, *mutatis mutandis*, the provisions of the GPA specified in Appendix 1 to Annex XXI (Government Procurement) to this Agreement, on a bilateral basis, to suppliers, goods or services of another Party. Each Party shall also apply, with regard to covered procurement, the provisions on value of thresholds in Appendix 5 to Annex XXI (Government Procurement).

#### ARTICLE 6.2

##### ***Additional Disciplines***

In addition to the provisions referred to under Article 6.1 (Scope and Coverage), the Parties shall apply the provisions in Articles 6.3 (Use of Electronic Means); 6.4 (Electronic Publication of Procurement Notices); 6.5 (Supporting Evidence); 6.6 (Conditions for Participation); 6.7 (Registration Systems and Qualification Procedures); 6.8 (Selective Tendering); 6.9 (Abnormally Low Prices); 6.10 (Facilitating Participation of Small and Medium-Sized Enterprises (SME)); 6.11 (Environmental, Social and Labour Considerations); 6.12 (Modifications and Rectifications of Market Access Commitments); 6.13 (Modifications); 6.14 (Rectifications) and 6.15 (Further Negotiations).

#### ARTICLE 6.3

##### ***Use of Electronic Means***

1. Each Party shall ensure that its procuring entities conduct covered procurement by electronic means to the widest extent practicable.

2. A procuring entity is considered as conducting covered procurement by electronic means if the entity uses electronic means of information and communication for:
  - (a) the publication of notices and tender documentation in procurement procedures; and
  - (b) the submission of requests to participate and the submission of tenders.
3. Except for specific situations, such electronic means of information and communication shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict access to the procurement procedure.
4. Each Party shall ensure that its procuring entities receive and process electronic invoices in accordance with its law.

#### ARTICLE 6.4

##### ***Electronic Publication of Procurement Notices***

1. With regard to covered procurement, all procurement notices including notices of intended procurement, summary notices, notices of planned procurement and contract award notices shall be directly accessible by electronic means, free of charge, through a single point of access on the internet.
2. Each Party shall publish notices in accordance with Appendix 3 to Annex XXI (Government Procurement).

#### ARTICLE 6.5

##### ***Supporting Evidence***

Each Party shall ensure that at the time of submission of requests to participate or at the time of submission of tenders, procuring entities do not require suppliers to submit all or part of the supporting evidence that they are not in one of the situations in which a supplier may be excluded and that they fulfil the conditions for participation unless this is necessary to ensure the proper conduct of the procurement.

## ARTICLE 6.6

### ***Conditions for Participation***

Each Party shall ensure that where its procuring entities require a supplier, as a condition for participation in a covered procurement, to demonstrate prior experience they do not require that the supplier has such experience in that Party.

## ARTICLE 6.7

### ***Registration Systems and Qualification Procedures***

A Party that maintains a supplier registration system shall ensure that interested suppliers may request registration at any time. Any interested supplier having made a request shall be informed within a reasonable period of time of the decision to grant or reject this request.

## ARTICLE 6.8

### ***Selective Tendering***

Each Party shall ensure that where a procuring entity uses a selective tendering procedure, the procuring entity addresses invitations to submit a tender to a number of suppliers that is sufficient to ensure genuine competition without affecting the operational efficiency of the procurement system.

## ARTICLE 6.9

### ***Abnormally Low Prices***

Further to paragraph 6 of Article XV of the GPA, if a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may also verify with the supplier whether the price takes into account the grant of subsidies.

## ARTICLE 6.10

### ***Facilitating Participation of Small and Medium-Sized Enterprises (SMEs)***

1. The Parties recognise the important contribution of SMEs to economic growth and employment and the importance of facilitating their participation in government procurement.
2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for

eligibility, is transparent and non-discriminatory against suppliers from the other Parties.

3. If available, a Party shall, upon request of another Party, provide information regarding its measures aimed at promoting, encouraging and facilitating the participation of SMEs in government procurement. The Parties' contact points are listed in Appendix 4 to Annex XXI (Government Procurement).
4. With a view to facilitating participation by SMEs in government procurement, each Party shall, to the extent possible, and if appropriate:
  - (a) provide comprehensive procurement-related information in a single electronic portal;
  - (b) endeavour to make all tender documentation available free of charge;
  - (c) conduct procurement by electronic means or through other new information and communication technologies; and
  - (d) consider the size, design, and structure of the procurement.

#### ARTICLE 6.11

##### ***Environmental, Social and Labour Considerations***

Each Party shall:

- (a) allow procuring entities to take into account environmental, labour and social considerations throughout the procurement procedure, provided they are non-discriminatory and are not applied in a discriminatory manner; and
- (b) take appropriate measures to ensure compliance with its obligations under environmental, social and labour law, including those established under Chapter 13 (Trade and Sustainable Development).

#### ARTICLE 6.12

##### ***Modifications and Rectifications of Market Access Commitments***

Each Party may modify or rectify its market access commitments in Appendix 2 to Annex XXI (Government Procurement) in accordance with the procedures set out in Articles 6.13 (Modifications) and 6.14 (Rectifications).

## ARTICLE 6.13

### *Modifications*

1. A Party intending to modify Appendix 2 to Annex XXI (Government Procurement), shall:
  - (a) notify the other Parties in writing; and
  - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Parties to maintain a level of market access commitments comparable to that existing prior to the modification.
2. Notwithstanding point (b) of paragraph 1, a Party is not required to provide compensatory adjustments to the other Parties if the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement.
3. A Party's control or influence over the covered procurement of procuring entities is presumed to be effectively eliminated if the procuring entity is exposed to competition in markets to which access is not restricted.
4. Any other Party may object to the modification referred to in point (a) of paragraph 1 if it disputes that:
  - (a) a compensatory adjustment proposed under point (b) of paragraph 1 is adequate to maintain a comparable level of mutually agreed market access commitments; or
  - (b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence as provided for in paragraph 2.
5. A Party shall object in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 1 or that Party will be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Chapter 16 (Dispute Settlement).

## ARTICLE 6.14

### *Rectifications*

1. A Party intending to rectify Appendix 2 to Annex XXI (Government Procurement) shall notify the other Parties in writing.
2. The following changes to an Appendix to Annex XXI (Government Procurement) shall be considered a rectification, provided that they do not affect the mutually agreed market access commitments provided for in this Chapter:

- (a) a change in the name of a procuring entity;
  - (b) a merger of two or more procuring entities listed within that Sub-Section; and
  - (c) the separation of a procuring entity listed in that Sub-Section into two or more procuring entities that are added to the procuring entities listed in the same Sub-Section.
3. A Party may notify the other Parties of an objection to a proposed rectification within 45 days from having received the notification. A Party submitting an objection shall set out the reasons for considering the proposed rectification not as a change provided for in paragraph 1, and describe the effect of the proposed rectification on the mutually agreed market access commitments provided for in this Chapter. If no such objection is submitted in writing within 45 days after having received the notification, the other Parties shall be deemed to have agreed to the proposed rectification.

## ARTICLE 6.15

### *Further Negotiations*

In case a Party in the future offers additional benefits with regard to its respective government procurement market access coverage agreed under this Chapter to a non-party, it shall agree, upon request of another Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.



**CHAPTER 7**  
**INTELLECTUAL PROPERTY<sup>59</sup>**

**SECTION 7.1**  
**GENERAL PROVISIONS**

ARTICLE 7.1

*Objectives*

The objectives of this Chapter are to:

- (a) facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and
- (b) ensure an adequate effective and non-discriminatory level of protection and enforcement of intellectual property rights.

ARTICLE 7.2

*Scope*

- 1. This Chapter shall complement the rights and obligations of each Party under the Agreement on Trade-Related Aspects of Intellectual Property Rights, done at Marrakesh on 15 April 1994 (TRIPS Agreement) and other international treaties in the field of intellectual property to which they are parties.
- 2. This Chapter does not preclude a Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.

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<sup>59</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), any matter pertaining to: i) geographical indications, including Sub-Section 7.2.4 (Geographical Indications and Traditional Terms); ii) patents, including Sub-Section 7.2.5 (Patents); and iii) enforcement, including Section 7.3 (Enforcement of Intellectual Property Rights) shall not apply to Liechtenstein.

### ARTICLE 7.3

#### ***Definitions***

For the purposes of this Chapter, the following definitions apply:

- (a) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;
- (b) “Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;
- (c) “Rome Convention” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (d) “WIPO” means the World Intellectual Property Organization;
- (e) “intellectual property rights” means copyrights, including the protection of computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications for goods, and indications of source for goods and services, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information; and
- (f) “national” means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

### ARTICLE 7.4

#### ***International Agreements***

1. Subject to paragraph 2, the Parties affirm their commitment to comply with the international agreements to which they are party:
  - (a) the TRIPS Agreement;
  - (b) the Rome Convention;
  - (c) the Berne Convention;
  - (d) the Paris Convention;

- (e) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
  - (f) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;
  - (g) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977;
  - (h) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;
  - (i) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;
  - (j) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;
  - (k) the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1978 or 1991;<sup>60</sup> and
  - (l) the European Patent Convention of 5 October 1973 as revised by the Act revising Article 63 EPC on 17 December 1991 and the Act revising the EPC of 29 November 2000.
2. If a Party to this Agreement is not a party to one or more of the multilateral agreements listed in paragraph 1, then that Party affirms the substantive standards of any listed agreement or agreements to which it is not a party.
  3. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements, provided they are not already a party to them:
    - (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012; and
    - (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006.

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<sup>60</sup> Liechtenstein is not yet a party to the Convention for the Protection of New Varieties of Plants. The obligation with regard to subparagraph (k) of paragraph 1 and paragraph 2 of this Article shall become applicable to Liechtenstein once it has become a party to the Convention.

## ARTICLE 7.5

### *Exhaustion*

This Chapter does not affect the freedom of each Party to determine whether and under what conditions the exhaustion of intellectual property rights applies.

## ARTICLE 7.6

### *National Treatment*

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to the nationals of each other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.
2. For the purposes of paragraph 1, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter, including measures to prevent the circumvention of effective technological measures as referred to in Article 7.16 (Protection of Technological Measures) and measures concerning rights management information as referred to in Article 7.17 (Obligations Concerning Rights Management Information).
3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:
  - (a) necessary to secure compliance with the Party’s laws or regulations which are not inconsistent with this Chapter; or
  - (b) not applied in a manner which would constitute a disguised restriction on trade.
4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

## **SECTION 7.2**

### **STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS**

#### **SUB-SECTION 7.2.1**

#### **COPYRIGHT AND RELATED RIGHTS**

##### **ARTICLE 7.7**

###### ***Authors***

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

- (a) 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) except in relation to buildings or works of applied art, the commercial rental to the public of originals or copies of their works.

##### **ARTICLE 7.8**

###### ***Performers***

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

- (a) the fixation 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 of fixations of their performances, by wire or wireless means, in such a way that members of the public

may access them from a place and at a time individually chosen by them;

- (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 7.9

##### ***Producers of Phonograms***

Each Party shall provide phonogram producers with 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;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (d) the commercial rental of their phonograms to the public.

#### ARTICLE 7.10

##### ***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 those 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 7.11

##### ***Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes***

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 or any communication to the public.
2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. 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.
3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

#### ARTICLE 7.12

##### ***Term of Protection***

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. For the purpose of implementing paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.

3. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
4. The rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 50 years from the first such publication or communication to the public, whichever is the earlier.
5. The rights of performers for their performances fixed in phonograms shall expire 50 years after the date of fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 70 years from such act, whichever is the earlier.
6. The rights of producers of phonograms shall expire 50 years after the fixation is made or, if lawfully published to the public during this time, 70 years from such publication. In the absence of a lawful publication, if the phonogram has been lawfully communicated to the public during this time, the term of protection shall be 70 years from such act of communication. Each Party may provide for effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
7. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.
8. Each Party may provide for longer terms of protection than those provided for in this Article.

#### ARTICLE 7.13

##### ***Resale Right***

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the 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 where the resale price does not exceed a certain minimum amount.



4. The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

#### ARTICLE 7.14

##### ***Collective Management of Rights***

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in the respective Parties and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.
2. The Parties shall promote the transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.
3. The Parties shall endeavour to facilitate arrangements between their respective collective management organisations on non-discriminatory treatment of right holders whose rights these organisations manage under representation agreements.
4. The Parties shall cooperate to support the collective management organisations established in the Parties and representing another collective management organisation established in another Party by way of a representation agreement with a view to ensuring that they accurately, regularly and diligently pay amounts owed to the represented collective management organisations and provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to that rights revenue.

#### ARTICLE 7.15

##### ***Exceptions and Limitations***

Each Party shall confine limitations or exceptions to the rights set out in Articles 7.7 (Authors) to 7.11 (Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes) to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.

## ARTICLE 7.16

### *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 or she is pursuing that objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programmes.
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;
  - (b) have only a limited commercially significant purpose or use other than to circumvent; or
  - (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.
3. For the purposes of this Sub-Section, “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 covered by this Sub-Section. 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 protection objective.
4. Notwithstanding the legal protection provided for in paragraph 1, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 7.15 (Exceptions and Limitations) from enjoying such exceptions or limitations.

## ARTICLE 7.17

### ***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:
  - (a) the removal or alteration of any electronic rights-management information; and
  - (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Sub-Section from which electronic rights-management information has been removed or altered without authority.
2. If such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.
3. For the purposes of this Article, “rights-management information” means any information provided by right holders which identifies the work or other subject-matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.
4. Paragraph 2 applies if 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 Article.

## **SUB-SECTION 7.2.2**

### **TRADE MARKS**

#### **ARTICLE 7.18**

##### ***Trade Mark Classification***

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.

#### **ARTICLE 7.19**

##### ***Signs of Which a Registered Trade Mark May Consist***

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, or any combination of such signs, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and
- (b) being represented on the respective trade mark registers of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

#### **ARTICLE 7.20**

##### ***Rights Conferred by a Registered Trade Mark***

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties that do not have the proprietor's consent from using in the course of trade in relation to goods or services:
  - (a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;
  - (b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the

likelihood of association between the sign and the registered trade mark; or

- (c) any sign which is identical with, or similar to, the trade mark (irrespective of whether it is used in relation to goods or services which are identical with, similar to, or not similar to, those for which the trade mark is registered) where the trade mark has a reputation in the relevant Party and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.
- 2. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.
  - 3. If the reproduction of a trade mark in a dictionary, encyclopedia or similar reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request in writing of the proprietor of the trade mark, ensure that the reproduction of the trade mark is, without delay, and in the case of works in printed form at the latest in the next edition of the publication, accompanied by an indication that it is a registered trade mark.

## ARTICLE 7.21

### ***Registration Procedure***

- 1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.
- 2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or where appropriate, trade mark registrations.
- 3. Each Party shall provide for the possibility for third parties to apply for the invalidation or revocation of trade mark registrations. Such invalidation or revocation proceedings shall be adversarial.
- 4. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.
- 5. Each Party's trade mark application, processing, registration and maintenance systems may be provided electronically.

## ARTICLE 7.22

### ***Well-Known Trade Marks***

1. For the purpose of giving effect to the protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party reaffirms the importance of, and shall be guided by 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 WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.
2. No Party may require, as a condition for determining that a trade mark is well known, that the trade mark has been registered in that Party or in another jurisdiction, included on a list of well-known trade marks or given prior recognition as a well-known trade mark.

## ARTICLE 7.23

### ***Exceptions to the Rights Conferred by a Trade Mark***

1. Each Party may provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.
2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
  - (a) the name or address of the third party, where the third party is a natural person;
  - (b) signs or 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; or
  - (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided the third party uses them in accordance with honest practices in industrial or commercial matters.
3. The trade mark 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 law of the Party in question and is used within the limits of the territory in which it is recognised.

#### ARTICLE 7.24

##### ***Grounds for Revocation***

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.
2. Each Party shall also provide that a trade mark shall be liable to revocation if within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the relevant Party by the proprietor or with the proprietor's consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non- use.
3. However, no person may claim that the proprietor's rights in a trade mark 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 trade mark 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 occur only after the proprietor becomes aware that the application for revocation may be filed.
4. A trade mark shall also be liable to revocation if, after the date on which it was registered:
  - (a) as a 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) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's 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 7.25

##### ***The Right to Prohibit Preparatory Acts in Relation to the Use of Packaging or Other Means***

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services, and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

- (a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or
- (b) offering or placing on the market, or stocking for those purposes, or importing or exporting: packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

#### ARTICLE 7.26

##### ***Bad Faith Applications***

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



### **SUB-SECTION 7.2.3**

#### **DESIGN**

##### ARTICLE 7.27

##### ***Protection of Registered Designs***

1. Each Party shall provide for the protection of designs that are new and have individual character. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Sub-Section.
2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, using, offering for sale, selling, importing, exporting, or stocking a product in which the design is incorporated or to which it is applied, where such acts are undertaken for commercial purposes.
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 have individual character:
  - (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 individual character.
4. For the purposes of subparagraph 3(a), "normal use" means use by the end user, excluding maintenance, servicing or repair work.

##### ARTICLE 7.28

##### ***Duration of Protection***

The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed.<sup>61</sup> A Party may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.

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<sup>61</sup> Each Party may determine the relevant date of filing of the application in accordance with its own law.

## ARTICLE 7.29

### ***Exceptions and Exclusions***

1. Each Party may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, in each case taking account of the legitimate interests of third parties.
2. Protection shall not extend to designs solely dictated by technical or functional considerations. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
3. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in paragraph 1 of Article 7.27 (Protection of Registered Designs), subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

## ARTICLE 7.30

### ***Relationship to Copyright***

Each Party shall ensure that designs shall also be eligible for protection under the copyright law of that 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 7.2.4**

### **GEOGRAPHICAL INDICATIONS AND TRADITIONAL TERMS**

#### **ARTICLE 7.31**

##### ***Effect of this Sub-Section***

The provisions of this Sub-Section shall supersede Articles 46 and 47 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union, done at London on 28 January 2020 (Separation Agreement) in its entirety.

#### **ARTICLE 7.32**

##### ***Scope***

1. This Sub-Section applies to the recognition and protection of geographical indications for agricultural products and foodstuffs which originate in the territories of the United Kingdom and Iceland, and for wines, aromatised wines and spirits drinks which originate in the territories of the Parties,<sup>62</sup> and traditional terms which originate in the United Kingdom.<sup>63</sup>
2. This Sub-Section does not apply to the recognition and protection by Norway of geographical indications for agricultural products and foodstuffs which originate in the territory of the United Kingdom.

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<sup>62</sup> This Sub-Section shall not apply to geographical indications protected by the Parties under other international agreements to which the Parties are subject.

<sup>63</sup> Without prejudice to this paragraph, the geographical indications and traditional terms of the United Kingdom listed in Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) may include the geographical indications and traditional terms of the Bailiwicks of Guernsey and Jersey and the Isle of Man.

#### ARTICLE 7.33

##### ***Systems for the Registration and Protection of Geographical Indications***

1. The Parties shall continue to operate systems for the registration and protection of geographical indications in their territories that include at least the following elements:<sup>64</sup>
  - (a) a register listing geographical indications protected in their respective territories;
  - (b) an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
  - (c) a requirement that a geographical indication shall correspond to a specific product or products for which a product specification is laid down which may only be amended by due administrative process;
  - (d) control provisions applying to production;
  - (e) legal provisions laying down that a geographical indication may be used by any operator marketing the product conforming to the corresponding specification; and
  - (f) an objection 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.

#### ARTICLE 7.34

##### ***Recognition of Specific Geographical Indications***

1. In Iceland, the geographical indications of the United Kingdom listed in Parts A, B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.
2. In Norway, the geographical indications of the United Kingdom listed in Parts B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.

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<sup>64</sup> The United Kingdom recognises that the systems for the registration and protection of geographical indications as applicable in the territories of each of Iceland and Norway at the date of entry into force of this Agreement meet the elements laid down in this Article.

3. In the United Kingdom, the geographical indications of Norway listed in Annex XXIII (Geographical Indications of Norway), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.
4. In the United Kingdom, the geographical indications of Iceland listed in Part A of Annex XXII (Geographical Indications of Iceland), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.

#### ARTICLE 7.35

##### ***Protection of Traditional Terms***

In Iceland and Norway the traditional terms of the United Kingdom listed in Part C of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) shall be protected against:

- (a) any misuse, including where it is accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar;
- (b) any other false or misleading indication in the marketing of a product as to its nature, characteristics or essential qualities; and
- (c) any other practice likely to mislead the consumer.

#### ARTICLE 7.36

##### ***Right of Use***

A geographical indication protected under this Sub-Section may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

#### ARTICLE 7.37

##### ***Scope of Protection***

1. Geographical indications referred to in Article 7.34 (Recognition of Specific Geographical Indications), including those added pursuant to Article 7.40 (Amending the Annexes on Geographical Indications) and Article 7.41 (Processing of Specific Geographical Indications), shall be protected against:
  - (a) the direct or indirect commercial use of any means in the designation or presentation of a product that indicates or suggests that the product

in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the product;

- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used<sup>65</sup> in translation or transcription or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar;
  - (c) any other false or misleading indication in the marketing of a product as to its origin, nature or essential qualities, which is liable to convey a false impression as to its origin; and
  - (d) any other use which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention.
2. This Sub-Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.
  3. If geographical indications of the Parties are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith. Each Party shall decide the practical conditions of use under which the 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. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country. Each Party shall notify the other Parties if a geographical indication ceases to be protected in the territory of the Party of origin. Such notification shall take place in accordance with paragraph 4 of Article 7.40 (Amending the Annexes on Geographical Indications).
  5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trade mark which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection of the geographical indication. Such trade mark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist in the legislation of the Party

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<sup>65</sup> For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the protected name and the translated or transliterated term.

concerned. The date of application for protection of the geographical indication is determined in accordance with paragraph 2 of Article 7.39 (Relationship with Trade Marks).

6. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.
7. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name is the term customary in common language as the common name for the good concerned in the territory of that Party.
8. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if, in light of a trade mark'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 7.38

##### ***Enforcement of Protection***

Each Party shall authorise its competent authorities to take appropriate measures *ex officio* or on request of an interested party in accordance with its law to protect geographical indications of another Party protected under this Sub-Section.

#### ARTICLE 7.39

##### ***Relationship with Trade Marks***

1. The registration of a trade mark that corresponds to any of the situations referred to in paragraph 1 of Article 7.37 (Scope of Protection) in relation to a geographical indication protected under Article 7.34 (Recognition of Specific Geographical Indications) for like products, including those added pursuant to Article 7.40 (Amending the Annexes on Geographical Indications) and Article 7.41 (Processing of Specific Geographical Indications), shall be refused or invalidated by the Parties, provided an application for registration of the trade mark is submitted after the date of application for protection of the geographical indication in the territory concerned.
2. For the purposes of paragraph 1:
  - (a) for geographical indications referred to in paragraph 1 of Article 7.34 (Recognition of Specific Geographical Indications) and listed in Part A of Annex XXIV (Geographical Indications and Traditional Terms

of the United Kingdom) as at the date of entry into force of this Agreement, the date of application for protection shall be 1 May 2018;

- (b) for geographical indications referred to in Article 7.34 (Recognition of Specific Geographical Indications) and listed in Parts B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) and Annex XXIII (Geographical Indications of Norway) as at the date of entry into force of this Agreement, the date of application for protection shall be the date on which the application that resulted in the first registration of the geographical indication in the Union was submitted to the European Commission;
- (c) for geographical indications referred to in Article 7.40 (Amending the Annexes on Geographical Indications), and added to an annex referred to in paragraph 1 of Article 7.40 (Amending the Annexes on Geographical Indications) after the date of entry into force of this Agreement, the date of application for protection shall be the date of a Party's receipt of a request by the other Party to protect a geographical indication; and
- (d) for geographical indications referred to in Article 7.41 (Processing of Specific Geographical Indications), and added to Part A of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) or Part A of Annex XXII (Geographical Indications of Iceland) after the date of entry into force of this Agreement, the date of application for protection shall be the date on which this Agreement is signed.

#### ARTICLE 7.40

##### ***Amending the Annexes on Geographical Indications***

1. The Parties agree on the possibility of adding geographical indications to Parts A, B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom,) Annex XXIII (Geographical Indications of Norway) and Part A of Annex XXII (Geographical Indications of Iceland) in accordance with the procedure set out in this Article after having completed an objection procedure and after having examined the geographical indications to the satisfaction of the relevant Parties.
2. For a geographical indication to be added to an annex referred to in paragraph 1 each of the following shall occur:
  - (a) the Party from which the relevant geographical indication originates (the Requesting Party) shall make a request to another Party (the



Receiving Party) to commence an examination and objection procedure with a view to adding to the relevant annex;

- (b) the Requesting Party shall copy its request to the Sub-Committee on Trade in Goods established under Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods);
  - (c) upon the receipt of a request, the Receiving Party shall without undue delay undertake any necessary examination and objection procedures; and
  - (d) upon completing those procedures the Receiving Party shall, as soon as reasonably practicable, notify the Requesting Party and the Sub-Committee on Trade in Goods of the outcome in relation to the geographical indication it has considered.
3. At the first meeting of the Sub-Committee on Trade in Goods after receiving a notification referred to in subparagraph 2(d) confirming the eligibility for protection of a geographical indication in the territory of the Receiving Party, the Sub-Committee on Trade in Goods shall consider the request of the Requesting Party with a view to making a recommendation to the Joint Committee pursuant to paragraph 5 of Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods) that the geographical indication should be added to the relevant annex.
4. If a geographical indication ceases to be protected in its country of origin or has fallen into disuse in that country, pursuant to paragraph 4 of Article 7.37 (Scope of Protection), the Party from which the geographical indication originates shall notify the other Parties and the Sub-Committee on Trade in Goods. At the first meeting of the Sub-Committee on Trade in Goods following the receipt of the notification referred to in this paragraph, the Sub-Committee on Trade in Goods shall make a recommendation to the Joint Committee that the geographical indication should be removed from the relevant annex.

#### ARTICLE 7.41

##### ***Processing of Specific Geographical Indications***

1. Notwithstanding Article 7.40 (Amending the Annexes on Geographical Indications), Iceland shall conduct an examination and objection procedure for the geographical indications of the United Kingdom listed in Part E of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) as soon as possible after receipt of the corresponding specifications.

2. Notwithstanding Article 7.40 (Amending the Annexes on Geographical Indications), the United Kingdom shall conduct an examination and objection procedure for the geographical indication of Iceland listed in Part B of Annex XXII (Geographical Indications of Iceland) as soon as possible after receipt of the corresponding specification.
3. Upon completion of the procedures referred to in paragraphs 1 and 2, Iceland and the United Kingdom shall, as soon as reasonably practicable, notify the Sub-Committee on Trade in Goods of the outcome in relation to the geographical indications it has considered.
4. The Sub-Committee on Trade in Goods shall make a recommendation to the Joint Committee pursuant to paragraph 5 of Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods) to add the geographical indications that are confirmed as eligible for protection to Part A of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) or Part A of Annex XXII (Geographical Indications of Iceland).

#### ARTICLE 7.42

##### ***Individual Applications for Protection of Geographical Indications and Traditional Terms***

The provisions of this Sub-Section are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of a Party.

#### ARTICLE 7.43

##### ***Indications of Source and Country Names***

1. Each Party shall provide the legal means to prevent a trade mark being registered which includes an indication of source or a country name in relation to a good or service in a manner that misleads consumers as to the origin of that good or service. This provision shall apply even if the geographical name is translated or used in a modified form if such use misleads the public as to the true place of origin of that good or service.

Each Party shall, in accordance with their obligations under Article 6~~ter~~ of the Paris Convention, provide that armorial bearings, flags and other State emblems of another Party are prevented from being used or registered as trade marks or designs without authorisation by the relevant competent authorities of that other Party where the law of such Party requires such authorisation. This paragraph shall also apply to signs that may be confused with armorial bearings, flags and other State emblems of a Party.

## SUB-SECTION 7.2.5

### PATENTS

#### ARTICLE 7.44

##### *Patents and Public Health*

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (Doha Declaration). In interpreting and implementing the rights and obligations under this Sub-Section, each Party shall ensure consistency with the Doha Declaration.
2. Each Party shall implement Article 31*bis* of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement.

#### ARTICLE 7.45

##### *Extension of the Period of Protection Conferred by a Patent on Medicinal Products and on Plant Protection Products<sup>66</sup>*

1. The Parties recognise that medicinal products and plant protection products<sup>67</sup> protected by a patent in the respective Party may be subject to an administrative authorisation procedure before being put on their respective markets. The Parties recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on the 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 further protection, in accordance with its law for a product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The terms and conditions for the provision of such further protection, including its length, shall be determined in accordance with each Party's law.
3. For the purposes of this Chapter, "medicinal product" means:

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<sup>66</sup> Liechtenstein does not issue marketing authorisations to place plant protection products or pharmaceutical products on its market. Instead, marketing authorisations in Liechtenstein are granted by the relevant Swiss or Austrian authorities, in accordance with the applicable Swiss and European Economic Area (EEA) legislation.

<sup>67</sup> For the purposes of this Chapter, the term "plant protection product" shall be defined for each Party by the respective law of the Party.

- (a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals; or
- (b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

## **SUB-SECTION 7.2.6**

### **PROTECTION OF UNDISCLOSED INFORMATION**

#### ARTICLE 7.46

##### ***Protection of Trade Secrets***

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. For the purposes of this Sub-Section:
  - (a) “trade secret” means information which meets all of the following requirements:
    - (i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
    - (ii) it has commercial value because it is secret; and
    - (iii) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and
  - (b) “trade secret holder” means any natural or legal person lawfully controlling a tradesecret.
3. For the purposes of this Sub-Section, at least the following conduct shall be considered contrary to honest commercial practices:
  - (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;
  - (b) the use or disclosure of a trade secret whenever it is carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
    - (i) having acquired the trade secret in a manner referred to in subparagraph (a);

- (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
    - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret;
  - (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew, or ought to have known, under the circumstances that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of subparagraph (b).
4. Nothing in this Sub-Section shall be understood as requiring a Party to consider any of the following conduct as contrary to honest commercial practices:
- (a) independent discovery or creation;
  - (b) observation, study, disassembly or testing of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;
  - (c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party; or
  - (d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the law of that Party.
5. Nothing in this Sub-Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the law of that Party.

#### ARTICLE 7.47

##### ***Protection of Data Submitted to Obtain an Authorisation to Put a Medicinal Product on the Market<sup>68</sup>***

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 steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.
2. Each Party shall ensure that for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application to that authority for the first marketing authorisation, without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which all the Parties are party provide otherwise.
3. Each Party shall also ensure that, for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, a medicinal product subsequently authorised by that authority on the basis of the results of the pre-clinical tests and clinical trials referred to in paragraph 2 is not placed on the market without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which the Parties are all party provide otherwise.
4. This Article is without prejudice to additional periods of protection which each Party may provide in that Party’s law.

#### ARTICLE 7.48

##### ***Protection of Data Submitted to Obtain Marketing Authorisation for Plant Protection Products or Biocidal Products<sup>69</sup>***

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorisation

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<sup>68</sup> Pursuant to the “Notenaustausch vom 11. Dezember 2001 zwischen der Schweiz und Liechtenstein betreffend die Geltung der schweizerischen Heilmittelgesetzgebung in Liechtenstein”, Liechtenstein applies the Swiss Legislation on Therapeutic Products (Medicinal Products and Medical Devices). In case of any inconsistencies between this Article and the Swiss Legislation on Therapeutic Products, the latter shall prevail.

<sup>69</sup> Pursuant to the Customs Union Treaty, Liechtenstein applies the Swiss Legislation on Plant Protection Products. In case of any inconsistencies between this Article and the Swiss Legislation on Plant Protection Products, the latter shall prevail.

concerning safety and efficacy of an active substance, plant protection product or biocidal product. During such period, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an active substance, plant protection product or biocidal product, unless the explicit consent of the first owner has been proved. For the purposes of this Article, that right is referred to as “data protection”.

2. The test or study report submitted for marketing authorisation of an active substance or plant protection product 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 10 years from the grant of the first authorisation by a relevant authority in the Party.
4. Each Party shall ensure that the public bodies responsible for the granting of a marketing authorisation will not use the information referred to in paragraphs 1 and 2 for the benefit of a subsequent applicant for any successive marketing authorisation, regardless whether or not it has been made available to the public.
5. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.



## **SECTION 7.3**

### **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

#### **SUB-SECTION 7.3.1**

#### **GENERAL PROVISIONS**

##### **ARTICLE 7.49**

##### ***General Obligations***

1. Each Party shall provide for in its respective law the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.
2. For the purposes of Sub-Sections 7.3.1 (General Provisions), 7.3.2 (Civil and Administrative Enforcement) and 7.3.4 (Civil Judicial Procedures and Remedies of Trade Secrets), the term “intellectual property rights” does not include rights covered by Sub-Section 7.2.6 (Protection of Undisclosed Information).
3. The measures, procedures and remedies referred to in paragraph 1 shall:
  - (a) be fair and equitable;
  - (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
  - (c) be effective, proportionate and dissuasive; and
  - (d) 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 7.50**

##### ***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 Sub-Sections 7.3.2 and 7.3.4 of this Section:

- (a) the holders of intellectual property rights in accordance with the law of a Party;

- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and
- (c) federations and associations<sup>70</sup>, in so far as permitted by and in accordance with the law of a Party.

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<sup>70</sup> For greater certainty, and in so far as permitted by the law of a Party, the term “federations and associations” includes at least collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

## **SUB-SECTION 7.3.2**

### **CIVIL AND ADMINISTRATIVE ENFORCEMENT**

#### **ARTICLE 7.51**

##### ***Measures for Preserving 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 who has presented reasonably available evidence to support their claims that their 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 appropriate safeguards and 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. The judicial authorities of a Party shall have the authority to adopt provisional measures without the other party to the proceedings having been heard, in particular where delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

#### **ARTICLE 7.52**

##### ***Evidence***

1. Each Party shall take the measures necessary to enable the competent judicial authorities to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to the protection of confidential information.
2. Each Party shall also take the necessary measures to enable the competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

## ARTICLE 7.53

### ***Right of Information***

1. Each Party shall ensure that, in the context of civil 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 or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.
2. For the purposes of paragraph 1, “any other person” means a person who:
  - (a) was found in possession of the infringing goods on a commercial scale;
  - (b) was found to be using the infringing services on a commercial scale;
  - (c) was found to be providing on a commercial scale services used in infringing activities; or
  - (d) was indicated by the person referred to in subparagraphs (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.
3. The information referred to in paragraph 1 shall, as appropriate, comprise:
  - (a) 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; and
  - (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
4. Paragraphs 1 and 2 shall apply without prejudice to any law of a Party which:
  - (a) grant the right holder rights to receive fuller information;
  - (b) govern the use in civil 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 their own participation or that of their 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 7.54

##### ***Provisional and Precautionary Measures***

1. Each Party shall ensure that its 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 the law of that Party, 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 at least copyright or related rights.
2. Each Party shall ensure that its judicial authorities may, at the request of the applicant, 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, each Party 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 their 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.
4. Each Party shall ensure that its judicial authorities shall, in respect of the measures referred to in paragraphs 1, 2 and 3, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

#### ARTICLE 7.55

##### ***Corrective Measures***

1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual

property right or at least the definitive removal of those goods from the channels of commerce. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.
3. In considering a request for corrective measures, 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 7.56

##### *Injunctions*

1. Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.
2. Each Party shall ensure that their judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe at least copyrights and related rights.

#### ARTICLE 7.57

##### *Alternative Measures*

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 7.55 (Corrective measures) or Article 7.56 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### ARTICLE 7.58

##### *Damages*

1. Each Party shall ensure that its judicial authorities shall have the authority to, on the application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in

an infringing activity, to pay to the rightholder damages appropriate to the actual prejudice suffered by the rightholder as a result of the infringement.

2. In the circumstances set out in paragraph 1, each Party shall ensure that when its judicial authorities set the damages:
  - (a) they 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 subparagraph (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.
3. Where the infringer did not knowingly engage, and did not have reasonable grounds to know it was engaging, in infringing activity, each Party may provide in its law that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

#### ARTICLE 7.59

##### ***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 7.60

##### ***Publication of Judicial Decisions***

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the 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 7.61

##### ***Presumption of Authorship or Ownership***

For the purposes of applying the measures, procedures and remedies provided for in Section 7.3 (Enforcement of Intellectual Property Rights):

- (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 the author's name to appear on the work in the usual manner; and
- (b) subparagraph (a) applies *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.



### **SUB-SECTION 7.3.3**

## **CIVIL JUDICIAL PROCEDURES AND REMEDIES OF TRADE SECRETS**

### ARTICLE 7.62

#### ***Civil Judicial Procedures and Remedies of Trade Secrets***

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in paragraph 1 of Article 7.46 (Protection of Trade Secrets), or who has access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.
2. Each Party shall ensure that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.
3. In the civil judicial proceedings referred to in paragraph 1 of Article 7.46 (Protection of Trade Secrets), each Party shall provide that its judicial authorities have the authority at least to:
  - (a) order provisional measures, in accordance with their respective law, to cease and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
  - (b) order measures, in accordance with their respective law, ordering the cessation of, or as the case may be, the prohibition of the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
  - (c) order, in accordance with their respective law, any person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known that he or she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;
  - (d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in paragraph 1 of Article 7.46 (Protection of Trade Secrets). Such specific measures may include, in accordance with each Party's respective law, the rights of defence, the possibility of restricting access to certain documents in whole or in part; of

restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted; and

- (e) impose sanctions on any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.
4. Each Party shall ensure that an application for the measure, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret contrary to honest commercial practices was carried out, in accordance with its law:
- (a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;
  - (b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions; or
  - (c) to protect a legitimate interest recognised by the law of that Party.

## **SUB-SECTION 7.3.4**

### **BORDER ENFORCEMENT**

#### ARTICLE 7.63

##### ***Border Measures***

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a competent authority to suspend the release of or detain suspected goods. For the purposes of this Sub-Section, “suspected goods” means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights.
2. Each Party shall endeavour to have in place electronic systems for the management by customs of the applications granted or recorded.
3. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.
4. Each Party shall ensure that its competent authorities decide about granting or recording applications within a reasonable period of time.
5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.
6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.
7. Each Party may encourage that its customs authorities use risk analysis to identify suspected goods.
8. Each Party may authorise its customs authority to provide a right holder, upon request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.
9. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in

exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids any harm to the right holder.

10. Each Party shall have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.
11. Each Party shall provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.
12. Each Party may decide not to apply this Article to the 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.
13. Each Party shall allow its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.
14. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall, as far as possible, share relevant information on trade in suspected goods affecting each other Party.

#### ARTICLE 7.64

##### ***Consistency with GATT 1994 and the TRIPS Agreement***

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Sub-Section, the Parties shall ensure consistency with their obligations under the GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

**SECTION 7.4**  
**OTHER PROVISIONS**

ARTICLE 7.65

***Cooperation***

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon among the Parties. The Parties affirm that cooperation under this Chapter is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, among any of the Parties, including between their respective intellectual property offices.

## **CHAPTER 8**

### **COMPETITION POLICY**

#### ARTICLE 8.1

##### ***Definitions***

For the purposes of this Chapter:

- (a) “anticompetitive business conduct” means:
  - (i) agreements between enterprises, concerted practices or decisions by associations of enterprises, which have as their object or effect the prevention, restriction or distortion of competition;
  - (ii) abuses by one or more enterprises that are dominant in a market; and
  - (iii) mergers between enterprises with substantial anti-competitive effects.
- (b) “enterprise” means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association; and
- (c) “competent authority” means an authority responsible for the enforcement of competition law.

#### ARTICLE 8.2

##### ***Competition Law***

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anticompetitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.
2. The Parties shall take appropriate measures to proscribe anticompetitive business conduct, recognising that such measures will enhance the fulfilment of the objectives of this Agreement.
3. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination and procedural fairness.

4. Each Party may provide for certain exemptions from the application of its competition law provided that those exemptions are transparent and are based on public policy grounds or public interest grounds. A Party shall make available to another Party public information concerning such exemptions provided under its competition law.

#### ARTICLE 8.3

##### ***Application of Competition Law to Public Enterprises***

Each Party shall ensure that the measures referred to in paragraph 2 of Article 8.2 (Competition Law) apply to its publicly owned or controlled enterprises to the extent required by its law.

#### ARTICLE 8.4

##### ***Cooperation***

1. The Parties recognise the importance of cooperation and coordination to further enhance effective competition law enforcement.
2. The Parties' respective competent authorities shall endeavour to coordinate and cooperate in the enforcement of their respective competition law to fulfil the objectives of this Agreement. The Parties shall take such steps as they consider appropriate to minimize direct or indirect obstacles or restrictions to effective enforcement cooperation between the competent authorities of the Parties.
3. The interested Parties may enter into a separate agreement on cooperation and coordination between their competent authorities, which may include conditions for the exchange and use of confidential information.
4. Nothing in this Article shall require a Party, or its competent authorities, to take any action which would be contrary to that Party's public policy or important interests.

#### ARTICLE 8.5

##### ***Dispute Settlement***

This Chapter shall not be subject to dispute settlement under Chapter 16 (Dispute Settlement).

## CHAPTER 9

### SUBSIDIES<sup>71</sup>

#### ARTICLE 9.1

##### *Principles*

The Parties recognise that subsidies may be granted by a Party when they are necessary to achieve public policy objectives. However, certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, subsidies should not be granted by a Party when it finds that they have or could have a significant negative effect on trade between the Parties.

#### ARTICLE 9.2

##### *Relationship with the WTO Agreement*

Nothing in this Chapter shall affect the rights and obligations of the Parties under Article VI of the GATT 1994, Article XV of GATS and the Agreement SCM Agreement.

#### ARTICLE 9.3

##### *Definition and Scope*

1. For the purposes of this Chapter, a “subsidy” means a measure related to trade which fulfils the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the recipients of the subsidy deal in goods or services.
2. A subsidy is subject to this Chapter only if it is specific within the meaning of Article 2 of the SCM Agreement.
3. This Chapter does not apply to subsidies granted to enterprises entrusted by the government with the provision of services to the general public for public policy objectives. Such exceptions from the rules on subsidies shall be transparent and shall not go beyond their targeted public policy objectives.

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<sup>71</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Chapter shall not apply to Liechtenstein with respect to subsidies related to trade in goods.



4. This Chapter does not apply to subsidies granted to compensate the damage caused by natural disasters or other exceptional non-economic occurrences.
5. This Chapter does not apply to subsidies granted temporarily to respond to a national or global economic emergency.<sup>72</sup> Such subsidies shall be targeted, economical, effective and efficient in order to remedy the identified temporary national or global economic emergency.
6. This Chapter applies only to specific subsidies of which the amount per beneficiary over a period of three years is above 450,000 Special Drawing Rights.
7. This Chapter does not apply to subsidies related to products covered by Annex 1 of the WTO Agreement on Agriculture and other subsidies covered by the WTO Agreement on Agriculture.
8. This Chapter does not apply to fisheries subsidies. The Parties share the objective of working jointly to develop a global, multilateral approach to the provision of subsidies to the fisheries sector, with the objective of prohibiting certain forms of fisheries subsidies which contribute to overfishing and overcapacity and eliminating subsidies that contribute to illegal, unreported and unregulated (IUU) fishing.
9. This Chapter does not apply to subsidies related to the audio-visual sector.

#### ARTICLE 9.4

##### *Transparency*

1. Every two years, each Party shall notify the other Parties of the following with respect to any subsidy granted or maintained:
  - (a) the legal basis of the subsidy;
  - (b) the form of the subsidy; and
  - (c) the amount of the subsidy or the amount budgeted for the subsidy.
2. If a Party makes publicly available on an official website the information specified in paragraph 1, the notification pursuant to paragraph 1 shall be deemed to have been made. Notifications provided to the WTO under Article 25.1 of the SCM Agreement are deemed to meet the requirement set out in paragraph 1.

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<sup>72</sup> For greater certainty, an emergency shall be understood as one that affects the whole economy of a Party.

## ARTICLE 9.5

### *Consultations*

1. If a Party considers that a subsidy granted by another Party negatively affects or may negatively affect its trade interests, it may express its concerns to that Party (the responding Party) in writing and request consultations on the matter. The responding Party shall accord full and sympathetic consideration to that request.
2. During consultations, a Party may seek additional information on a subsidy provided by the responding Party, including:
  - (a) its policy objective;
  - (b) its amount; and
  - (c) any measures taken to limit the potential distortive effect on trade.
3. The responding Party shall provide the requested information in writing no later than 60 days of the receipt of the request. If any requested information cannot be provided, that Party shall explain the absence of such information in its written response.
4. On the basis of the consultations, the responding Party shall endeavour to eliminate or minimise, as appropriate, any negative effects of the subsidy on the requesting Party's interests.

## ARTICLE 9.6

### *Use of Subsidies*

Each Party shall ensure that enterprises use subsidies only for the specific purpose for which the subsidies were granted.

## ARTICLE 9.7

### *Confidentiality*

When providing information under this Chapter, a Party is not required to disclose confidential information.

ARTICLE 9.8

***Dispute Settlement***

Article 9.5 (Consultations) of this Chapter shall not be subject to dispute settlement under Chapter 16 (Dispute Settlement).

## **CHAPTER 10**

### **SMALL AND MEDIUM-SIZED ENTERPRISES**

#### ARTICLE 10.1

##### ***General Principles***

The Parties recognise the importance of the provisions of this Chapter as well as other provisions in this Agreement that seek to enhance the ability of small and medium-sized enterprises, including micro-sized enterprises (SMEs), to take advantage of this Agreement.

#### ARTICLE 10.2

##### ***Information Sharing***

1. Each Party shall make information regarding this Agreement publicly and freely available online, including:
  - (a) the text of this Agreement;
  - (b) a summary of this Agreement; and
  - (c) information that it considers as useful for SMEs of the Parties.
2. Each Party shall include in the information referred to under paragraph 1 links to:
  - (a) the relevant websites of the other Parties; and
  - (b) the websites of its own government agencies or authorities and/or other appropriate entities that provide information the Party considers as useful to SMEs of the other Parties.

#### ARTICLE 10.3

##### ***SME Contact Points***

1. Each Party shall, upon entry into force of this Agreement, promptly designate an SME contact point and notify the other Parties of the contact details.
2. Each Party shall promptly notify the other Parties of any change to its SME contact point.

3. Taking into account SMEs' needs in the implementation of this Agreement, the SME contact points jointly or individually shall seek to:
  - (a) exchange SME-related information, including any matter brought to their attention by SMEs in their trade and investment activities with another Party;
  - (b) consider ways to increase trade and investment opportunities for the SMEs of all the Parties, regardless of their size and including SMEs owned by under-represented groups;
  - (c) ensure that the information referred to in Article 10.2 (Information Sharing) is up-to-date and relevant for SMEs, and recommend any additional information that the other Parties' SME contact points may publish;
  - (d) encourage, where appropriate, efforts of other bodies established under this Agreement to integrate SME-related considerations in their work; and
  - (e) consider any other matters of interest to SMEs as appropriate.
4. The SME contact points may, individually or jointly, raise any matter arising in their activities with the Joint Committee.
5. The SME contact points may cooperate with experts, external organisations and SME stakeholders, as appropriate, in carrying out their activities.

#### ARTICLE 10.4

##### ***Dispute Settlement***

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 16 (Dispute Settlement).

**CHAPTER 11**  
**GOOD REGULATORY PRACTICES AND REGULATORY**  
**COOPERATION**

**SECTION 11.1**  
**GENERAL PROVISIONS**

ARTICLE 11.1

*Objectives and General Principles*

1. The objectives of this Chapter are to promote good regulatory practices and regulatory cooperation between the Parties with the aim of enhancing trade and investment between the Parties by:
  - (a) promoting an effective, transparent and predictable regulatory environment; and
  - (b) discussing regulatory measures, practices or approaches of interested Parties, including how to enhance their efficient application.
2. Nothing in this Chapter shall affect the right of a Party to regulate in pursuit or furtherance of its public policy objectives.
3. Nothing in this Chapter shall be construed as preventing a Party from adopting, maintaining and applying regulatory measures in accordance with its legal framework, principles and deadlines, in order to achieve its public policy objectives.
4. Nothing in this Chapter shall be construed as obliging a Party to achieve any particular regulatory outcome.

ARTICLE 11.2

*Definitions*

For the purposes of this Chapter, unless otherwise specified:

- (a) “regulatory authority” means:
  - (i) in the case of Iceland, Liechtenstein and Norway, the Government of that Party; and

- (ii) in the case of the United Kingdom, Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland, and the devolved administrations of the United Kingdom; and
- (b) "regulatory measures" means legislation as set out in Annex XXV (Additional Provisions Concerning the Scope of "Regulatory Measures"). For Iceland, Liechtenstein and Norway, regulatory measures under this Chapter do not include measures following from obligations under the EEA Agreement.

### ARTICLE 11.3

#### *Scope*

1. Section 11.2 (Good Regulatory Practices) applies to all regulatory measures issued by the regulatory authority of a Party in respect of any matter covered by this Agreement.
2. Sections 11.3 (Regulatory Cooperation) and 11.4 (Institutional Provisions) apply to other measures of general application issued by the regulatory authority of a Party which are relevant to regulatory cooperation activities, such as guidelines, policy documents or recommendations, in addition to the regulatory measures referred to in paragraph 1.
3. Any specific provisions in other Chapters of this Agreement shall prevail over the provisions of this Chapter to the extent necessary for the application of the specific provisions.

### SECTION 11.2

#### **GOOD REGULATORY PRACTICES**

### ARTICLE 11.4

#### *Internal Coordination*

Each Party shall endeavour to maintain internal processes or mechanisms to foster good regulatory practices, including those provided for in this Section.

## ARTICLE 11.5

### ***Regulatory Processes and Mechanisms***

Each Party shall ensure that their regulatory authority provides public access to descriptions of the processes and mechanisms under which its regulatory measures are prepared, evaluated and reviewed. Where practicable, this information should be made available online. Those descriptions should refer to relevant guidelines, rules or procedures.

## ARTICLE 11.6

### ***Public Consultations***

1. When preparing significant<sup>73</sup> regulatory measures, the regulatory authority of each Party should, to the extent practicable and in a manner consistent with its legal system for adopting new measures:
  - (a) publish either the draft regulatory measures or consultation documents providing sufficient details about regulatory measures under preparation to allow any person to assess whether and how the person's interests might be significantly affected;
  - (b) offer, on a non-discriminatory basis, reasonable opportunities for any person to provide comments<sup>74</sup>; and
  - (c) consider the comments received.
2. The regulatory authority of each Party should make use of electronic means of communication and seek to maintain online services that are freely and publicly available for the purpose of providing information and receiving comments related to public consultations.
3. The regulatory authority of each Party shall make publicly available any comment received or a summary of the results of the consultations. This obligation does not apply to the extent necessary for the protection of confidential or sensitive information, for withholding personal data or inappropriate content or for other justified grounds such as the risk of harm to the interests of a third party.

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<sup>73</sup> The regulatory authority of each Party may determine what constitutes "significant" regulatory measures for the purpose of its obligations under this Section.

<sup>74</sup> For clarity, this does not create any obligation to provide consultation documents in any other languages than normally used in the Party.



## ARTICLE 11.7

### ***Proportionate Analyses***

1. The regulatory authority of each Party shall endeavour to carry out, in accordance with the relevant rules and procedures, a proportionate analysis of significant regulatory measures under preparation.
2. When carrying out a proportionate analysis, the regulatory authority of each Party shall establish and maintain processes and mechanisms under which the following factors should be taken into consideration:
  - (a) the need for the regulatory measure, including the nature and the significance of the issue that the regulatory measure intends to address; and
  - (b) any feasible and appropriate regulatory or non-regulatory alternatives, including the option of not regulating, if available, that would achieve the Party's public policy objectives.
3. The regulatory authority of each Party shall provide public access to the findings of its proportionate analyses consistent with their rules and procedures. Where practicable, this information should be made available online and in a timely manner.

## ARTICLE 11.8

### ***Retrospective Evaluation***

The regulatory authority of each Party should maintain processes or mechanisms for the purpose of carrying out retrospective evaluation of regulatory measures in force where appropriate.

## ARTICLE 11.9

### ***Exchange of Information on Good Regulatory Practices***

The regulatory authorities may exchange information on their good regulatory practices as referred to in this Section, such as practices regarding proportionate analyses or those regarding retrospective evaluations.

## **SECTION 11.3**

### **REGULATORY COOPERATION**

#### **ARTICLE 11.10**

##### ***Regulatory Cooperation Activities***

1. A Party may propose a regulatory cooperation activity to another Party. It shall present that proposal via the contact point designated in accordance with Article 11.11 (Contact Points).
2. The other Party shall review the proposal in due course and shall inform the proposing Party whether it considers the proposed activity suitable for regulatory cooperation.
3. If the Parties concerned decide to engage in a regulatory cooperation activity, the regulatory authority of each Party shall:
  - (a) inform the regulatory authority of the other Party about the development of new or the revision of existing measures that are relevant for the regulatory cooperation activity;
  - (b) on request, provide information and discuss measures that are relevant for the regulatory cooperation activity; and
  - (c) when developing new or revising existing regulatory or other measures, consider, to the extent feasible, any regulatory approach by the other Party on the same or a related matter.
4. The Parties may engage in regulatory cooperation activities on a voluntary basis. A Party may refuse to engage in or withdraw from regulatory cooperation activities. A Party that refuses to engage in or withdraws from regulatory cooperation activities should explain the reasons for its decision to the other Party.
5. Where appropriate, the regulatory authorities may, by mutual consent, entrust the implementation of a regulatory cooperation activity to the relevant bodies in the Parties.

## **SECTION 11.4**

### **INSTITUTIONAL PROVISIONS**

#### **ARTICLE 11.11**

##### ***Contact Points***

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Section and for exchange of information in accordance with Article 11.12 (Exchange of Information on Planned or Existing Regulatory Measures) and notify the other Parties of the contact. The Parties shall promptly notify each other of any change of those contact details.

#### **ARTICLE 11.12**

##### ***Exchange of Information on Planned or Existing Regulatory Measures***

1. A Party may submit to another Party a request for information and clarifications regarding planned or existing regulatory measures of the other Party. The Party to whom the request is addressed shall endeavour to respond promptly.
2. The Parties shall not be required to disclose confidential or sensitive information or data.

#### **ARTICLE 11.13**

##### ***Dispute Settlement***

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 16 (Dispute Settlement).

## CHAPTER 12

### RECOGNITION OF PROFESSIONAL QUALIFICATIONS

#### ARTICLE 12.1

##### *Definitions*

1. For the purposes of this Chapter:
  - (a) “adaptation period” means a period of supervised practice, subject to an assessment and possibly accompanied by further training, of a regulated profession in the host jurisdiction under the responsibility of a qualified member of that profession;
  - (b) “aptitude test” means a test limited to the professional knowledge of professionals, made by the relevant authorities of the host jurisdiction with the aim of assessing the ability of the professional to pursue a regulated profession in that jurisdiction;
  - (c) “compensatory measures” means an adaptation period or an aptitude test;
  - (d) “evidence of formal qualifications” means diplomas, certificates and other evidence issued by an authority in the jurisdiction of one of the Parties and certifying successful completion of professional training obtained mainly in that jurisdiction;
  - (e) “home jurisdiction” means the jurisdiction of the Party in which the professional qualifications were obtained;
  - (f) “host jurisdiction” means the jurisdiction of the Party in which a professional wants to access and pursue a regulated profession;
  - (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or in any other form<sup>75</sup>;
  - (h) “measures of a Party” means measures adopted or maintained by:
    - (i) central, regional or local governments or authorities; and
    - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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<sup>75</sup> For greater certainty, the term “measure” includes failures to act

- (i) “profession” means an occupation or trade, or any subdivision of, or distinct specialism within, a profession;
- (j) “professional” means a natural person who has obtained their professional qualifications in one of the Parties and seeks to access and pursue a regulated profession in a host jurisdiction;
- (k) “professional activity” means an activity which forms part of a regulated profession;
- (l) “professional experience” means the lawful and effective practice of the relevant profession;
- (m) “professional qualifications” means qualifications attested by evidence of formal qualifications or professional experience;
- (n) “regulated profession” means a profession, the practice of which, including the use of a title or designation, is subject to the possession of specific professional qualifications by virtue of a measure of a Party; and
- (o) “relevant authority” means an authority or body, designated pursuant to a measure of a Party to recognise qualifications and authorise the practice of a regulated profession in a jurisdiction.

## ARTICLE 12.2

### ***Objectives and Scope***

1. This Chapter establishes a framework to facilitate a transparent and consistent regime for the recognition of professional qualifications by the Parties. This Chapter applies where:
  - (a) a professional with a professional qualification obtained in the United Kingdom makes an application to a relevant authority in Iceland, Liechtenstein or Norway for permission to access and pursue a regulated profession; or
  - (b) a professional with a professional qualification obtained in Iceland, Liechtenstein or Norway makes an application to a relevant authority in the United Kingdom for permission to access and pursue a regulated profession.
2. For the avoidance of doubt, this Chapter applies where the profession is regulated both in the home and host jurisdictions, and equally where the profession is only regulated in the host jurisdiction.

### ARTICLE 12.3

#### ***Domestic Regulation***

Any specific provisions in this Chapter shall prevail over the provisions of the Sub-Sections 3.5.1 (Domestic Regulation) and 3.5.2 (Provisions of General Application) of Chapter 3 (Services and Investment) to the extent necessary to give effect to the specific provision.

### ARTICLE 12.4

#### ***Recognition of Professional Qualifications***

1. Subject to Article 12.5 (Conditions for Recognition), recognition of a professional's professional qualifications by the host jurisdiction shall permit access to and the pursuit of the regulated profession in that jurisdiction by that professional<sup>76</sup>.
2. Upon recognition, the host jurisdiction shall accord treatment no less favourable in respect of access to or pursuit of the regulated profession to that professional than that it accords, in like situations, to natural persons who have obtained their qualifications in the host jurisdiction.
3. Each Party shall adopt, where applicable, and maintain the necessary measures that require relevant authorities to establish or operate a system for recognition which complies with Articles 12.5 (Conditions for Recognition) to 12.11 (Fees).
4. The measures referred to in paragraph 3 shall have effect on each Party upon its notification to the other Parties that its internal requirements to implement them are in place. Each Party shall use its best endeavours to have in effect the measures referred to in paragraph 3 and to have provided such notification within 24 months of the date of entry into force of the Agreement. A Party that is unable to provide such notification within this period shall report to the Sub-Committee on Services and Investment.

### ARTICLE 12.5:

#### ***Conditions for Recognition***

1. If access to or pursuit of a regulated profession in the host jurisdiction is contingent upon possession of specific professional qualifications, the

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<sup>76</sup> The Parties understand that the provisions of this Chapter are without prejudice to any provisions on market access or movement of natural persons, and only regulate issues relating to recognition of professional qualifications. The Parties also understand that this Chapter applies notwithstanding the legal grounds for which the right to access and pursue the regulated profession in the host Party are based on.

relevant authority shall recognise the professional qualifications of a professional who applies for recognition in the host jurisdiction and possesses comparable professional qualifications for the same profession in the home jurisdiction.<sup>77</sup>

2. A relevant authority may only refuse to recognise professional qualifications for the same profession where Conditions 1, 2, 3 or 4 are met.
3. Condition 1 is met where:
  - (a) there exists a substantial difference between the professional's professional qualifications and the essential knowledge or skills required to practise the profession in the host jurisdiction; and
  - (b) the professional fails, or refuses to take, an aptitude test or an adaptation period under Article 12.6 (Compensatory Measures).
4. Condition 2 is met where:
  - (a) the regulated profession in the host jurisdiction comprises one or more professional activities that cover substantially different matters from those covered by the professional's professional qualifications; and
  - (b) the professional fails, or refuses to take, an aptitude test or an adaptation period under Article 12.6 (Compensatory Measures).
5. Condition 3 is met where requiring the professional to take an aptitude test or to complete an adaptation period under Article 12.6 (Compensatory Measures) would amount to requiring the professional to acquire the professional qualifications required to practise the regulated profession in the host jurisdiction.
6. Condition 4 is met where access to and pursuit of a regulated profession by a natural person whose professional qualifications were obtained in the host jurisdiction is subject to conditions other than the possession of specific professional qualifications and the professional fails to meet those conditions.

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<sup>77</sup> Iceland, Liechtenstein and Norway observe that they are, pursuant to the EEA Agreement, obliged to respect the minimum training conditions for some professions harmonised in the EEA Agreement. For these professions and for the purposes of this Article, a professional's qualifications will only be recognised by Iceland, Liechtenstein and Norway where the professional satisfies those minimum training conditions on application or by, pursuant to Article 12.6 (Compensatory Measures), passing compensatory measures.

## ARTICLE 12.6

### ***Compensatory Measures***

1. A relevant authority may require a professional to take an aptitude test, standardised or otherwise, or to complete an adaptation period where:
  - (a) there exists a substantial difference between the professional's professional qualifications and the essential knowledge or skills required to practise the regulated profession in the host jurisdiction; or
  - (b) the regulated profession in the host jurisdiction comprises one or more professional activities that cover substantially different matters from those covered by the professional's professional qualifications.
2. The relevant authority may decide between an adaptation period or an aptitude test.
3. Relevant authorities are encouraged to apply compensatory measures in a manner proportionate to the difference they seek to address.
4. To the extent possible and at the professional's request, relevant authorities shall provide their reasons for requiring that professional to undertake compensatory measures in writing.
5. Each Party shall ensure that, where a relevant authority requires the professional to take an aptitude test, that relevant authority schedules aptitude tests with reasonable frequency and at least once a year, where applicable.

## ARTICLE 12.7

### ***Procedure for Applications***

1. The relevant authority shall:
  - (a) acknowledge receipt of the professional's application within one month of receipt and inform the professional of any missing document;
  - (b) grant the professional adequate time to complete the requirements and procedures of the application process;
  - (c) deal promptly with the professional's application; and
  - (d) issue a decision no later than four months after the date on which the complete application was submitted.



2. The relevant authority may require the professional to provide evidence of professional qualifications. The evidence requested shall be no more than is necessary to demonstrate that the professional holds comparable professional qualifications.
3. Where access to and pursuit of a regulated profession by a natural person whose professional qualifications were obtained in the host jurisdiction is subject to conditions other than the possession of specific professional qualifications, the relevant authority may require the professional to provide evidence that they satisfy those conditions. The evidence that is requested shall be no more than is necessary to demonstrate that the professional satisfies those conditions.
4. A relevant authority shall accept copies of documents that are authenticated in accordance with the Party's domestic law in place of original documents, unless the relevant authority requires original documents to protect the integrity of the recognition process.
5. The relevant authority<sup>78</sup> of the host jurisdiction and of the home jurisdiction shall work in close collaboration and shall exchange information to facilitate the professional's application, where applicable.
6. Where applicable, the relevant authority<sup>79</sup> of the host jurisdiction and of the home jurisdiction shall, notwithstanding any duty of confidentiality, exchange information regarding disciplinary action taken or criminal sanctions imposed or any other serious, specific circumstances which are likely to have consequences for the pursuit of the regulated professions by the professional. The Parties acknowledge that this is particularly important for the following professionals:
  - (a) health professionals exercising activities that have patient safety implications; and
  - (b) professionals exercising activities relating to the education of minors, including in childcare and early childhood education, where the professional is pursuing a profession regulated in that Party.

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<sup>78</sup> For the purposes of this paragraph, in Iceland, Liechtenstein and Norway, authorities other than those falling within the definition of "relevant authority" under subparagraph 1(o) Article 12.1 (Definitions) may be involved in the governance of regulated professions. In the case of such involvement of other authorities in Iceland, Liechtenstein or Norway, the Parties agree that information shall be exchanged between those authorities and the relevant authorities of another Party, where applicable, for compliance with this paragraph.

<sup>79</sup> For the purposes of this paragraph, in Iceland, Liechtenstein and Norway, authorities other than those falling within the definition of "relevant authority" under subparagraph 1(o) Article 12.1 (Definitions) may be involved in the governance of regulated professions. In the case of such involvement of other authorities in Iceland, Liechtenstein or Norway, the Parties agree that information shall be exchanged between those authorities and the relevant authorities of another Party, where applicable, for compliance with this paragraph.

7. Any exchange of information between relevant authorities pursuant to this Article shall be subject to the data protection law of each of the Parties.<sup>80</sup>

## ARTICLE 12.8

### *Licensing and Other Provisions*

1. The relevant authority shall make available to professionals information about the professional qualifications required to practise the regulated profession.
2. The relevant authority shall make available to professionals information that explains any other conditions that apply to the practice of the regulated profession including:
  - (a) where a licence to practise is required, the conditions under which a licence is obtained following the determination of eligibility and what that licence entails;
  - (b) membership of a professional body;
  - (c) use of professional or academic titles;
  - (d) having an office address, maintaining an establishment or being a resident;
  - (e) language skills;
  - (f) proof of good character;
  - (g) professional indemnity insurance;
  - (h) compliance with the host jurisdiction's requirements for the use of trade or firm names; and
  - (i) compliance with the host jurisdiction's ethics, for example, independence and good conduct.
3. The relevant authority shall make available to professionals information about:
  - (a) the relevant laws to be applied regarding, for example, disciplinary action, financial responsibility or liability;

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<sup>80</sup> The Parties understand that the obligation under this paragraph extends to any other authorities working in collaboration or exchanging information for the purposes of paragraphs 5 and 6.

- (b) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on practising professional activities;
  - (c) the process and procedures for the ongoing verification of competence; and
  - (d) the criteria for, and procedures relating to, revocation of the registration.
- 4. The relevant authority shall make available to professionals information about:
  - (a) the documentation required of professionals and the form in which it should be presented; and
  - (b) the acceptance of documents and certificates issued in relation to professional qualifications and other conditions that apply to the practice of the regulated profession.
- 5. The relevant authority shall deal promptly with enquiries from professionals about the professional qualifications required to practise the regulated profession and any other conditions that apply to the practice of the regulated profession.

#### ARTICLE 12.9

##### ***Knowledge of Languages***

Relevant authorities may require that professionals demonstrate they possess the language skills necessary to the practice of the relevant profession. If the regulated profession has patient safety implications, language skills may be controlled. Any language test shall be proportionate to the activity to be pursued.

#### ARTICLE 12.10

##### ***Appeals***

Each Party shall adopt measures granting professionals a right of appeal against:

- (a) a relevant authority's decision to refuse a professional's access to and pursuit of the regulated profession; and
- (b) a relevant authority's failure to make a decision about a professional's access to and pursuit of the regulated profession.

## ARTICLE 12.11

### ***Fees***

Each Party shall ensure fees charged by its relevant authorities in relation to measures under paragraph 3 of Article 12.4 (Recognition of Professional Qualifications) are:

- (a) reasonable and proportionate to the cost of the professional's application;
- (b) transparent, including in relation to fee structures, and made public in advance; and
- (c) payable by electronic means through the relevant authority's own website.

## ARTICLE 12.12

### ***Implementation of this Chapter by the Sub-Committee on Services and Investment***

1. The Sub-Committee on Services and Investment, established under Article 3.3 (Sub-Committee on Services and Investment) of Chapter 3 (Services and Investment), shall be responsible for the effective implementation and operation of this Chapter.
2. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of relevant authorities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee on Services and Investment.
3. The Sub-Committee on Services and Investment shall have the following functions:
  - (a) reporting to the Joint Committee, established under Article 15.1 (Joint Committee) of Chapter 15 (Institutional Provisions), as required;
  - (b) reviewing and monitoring the implementation and operation of this Chapter, including having regard to how relevant authorities apply the measures adopted under this Chapter;
  - (c) identifying areas for improvement in the implementation and operation of this Chapter;
  - (d) exchanging information on any matters relating to this Chapter, including facilitating the sharing of good practice on the implementation and operation of this Chapter between the Parties;

- (e) issuing guidance to the Parties on best practices in relation to the implementation and operation of this Chapter;
  - (f) formulating recommendations which it considers necessary for the effective implementation and operation of this Chapter. These recommendations shall be made to the Joint Committee, which may, in turn, decide to adopt those recommendations;
  - (g) developing guidelines for the development of the mutual recognition arrangements referred to in Article 12.13 (Establishment of Mutual Recognition Arrangements);
  - (h) discussing issues related to this Chapter and other issues relevant to the recognition of professional qualifications; and
  - (i) carrying out any other functions delegated to it by the Joint Committee.
4. The Parties shall have regard to any guidance issued by the Sub-Committee on Services and Investment in accordance with paragraph 3.

#### ARTICLE 12.13

##### *Establishment of Mutual Recognition Arrangements*

1. The United Kingdom, on the one hand, and Iceland, Liechtenstein and Norway, acting together or independently, on the other hand<sup>81</sup>, may establish mutual recognition arrangements (MRAs) to facilitate recognition of professional qualifications.
2. A MRA may build on the provisions of this Chapter. A MRA may provide for partial access to a profession, and recognition may be conditional upon completing any compensatory measures.
3. The Parties may agree to use the Sub-Committee on Services and Investment to facilitate discussions on MRAs.
4. The Parties may agree by consensus that a MRA established pursuant to this Article shall be considered to form an integral part of this Agreement<sup>82</sup>, by means of an Annex or otherwise.

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<sup>81</sup> For the purposes of this Article, MRAs may be concluded between the Parties or between their relevant authorities, in accordance with each Party's domestic law.

<sup>82</sup> For the avoidance of doubt, notwithstanding that agreement, the MRA shall only bind the parties thereto.

**CHAPTER 13**  
**TRADE AND SUSTAINABLE DEVELOPMENT**

**SECTION 13.1**  
**GENERAL PROVISIONS**

ARTICLE 13.1

*Context and Objectives*

1. The Parties recall the Rio Declaration on Environment and Development of 1992, the Agenda 21 on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development of 2002 and the Plan of Implementation of the World Summit on Sustainable Development of 2002, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the Ministerial Declaration of the United Nations Economic and Social Council on “Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development” of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the ILO Centenary Declaration for the Future of Work of 2019, the Rio+20 Outcome Document “The Future We Want” of 2012, the Convention on the Elimination of all Forms of Discrimination Against Women of 1979, and the UN 2030 Agenda for Sustainable Development of 2015.
2. The Parties shall promote sustainable development which encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing components. The Parties underline the benefit of cooperation on trade-related and investment-related aspects of labour and environmental issues as part of a global approach to trade and sustainable development.
3. The Parties reaffirm their commitments to promote the development of international trade and investment as well as commit to promote their preferential economic relationship in a manner that is beneficial to all and that contributes to sustainable development. The Parties are therefore determined to maintain and improve their respective high standards within the areas covered by this Chapter.

## ARTICLE 13.2

### ***Definitions***

1. For the purposes of this Chapter, “labour law and standards” means a Party’s law and standards, or other legally binding measure of a Party, that are directly related to the following rights, principles and protections:
  - (a) the fundamental principles and rights at work as referred to in paragraph 2 of Article 13.13 (International Labour Standards and Agreements); and
  - (b) labour protections in respect of wages, employment standards, information and consultation rights at company level, hours of work and health and safety at work which are consistent with the ILO Decent Work Agenda, as set out in the ILO Declaration on Social Justice for a Fair Globalisation.
2. For the purposes of this Chapter, “environmental law” means a law or other legally binding measure of a Party, the purpose of which is the protection of the environment (which is taken to include the mitigation of climate change), including the prevention of a danger to human life or health from environmental impacts, such as those that aim at:
  - (a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants including greenhouse gases;
  - (b) the management of chemicals and waste or the dissemination of information related thereto; or
  - (c) the conservation and protection of wild flora or fauna, including endangered species and their habitats, as well as protected areas,but does not include a measure of a Party solely related to worker health and safety.

## ARTICLE 13.3

### ***Right to Regulate and Levels of Protection***

1. The Parties affirm the right of each Party to set its own policies and priorities in the areas covered by this Chapter, to establish its own levels of protection relating to labour and the environment (including resource efficiency, mitigation of and adaptation to climate change), and to adopt or modify its law and policies in a manner consistent with its international commitments and with this Agreement.

2. Each Party shall seek to ensure that its law and policies covered by this Chapter provide for and encourage high levels of labour and environmental protection, and shall strive to continue to improve in a manner consistent with its international commitments, its law and policies and their underlying levels of protection, with the goal of providing high levels of labour and environmental protection.

#### ARTICLE 13.4

##### ***Upholding Levels of Protection***

1. The Parties shall not encourage trade or investment between the Parties by relaxing or lowering the level of protection provided by their respective environmental law or labour law and standards.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, or its labour law or standards in order to encourage trade or investment between the Parties.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law, or its labour law or standards in order to encourage trade or investment between the Parties.

#### ARTICLE 13.5

##### ***Transparency***

The Parties stress the importance of ensuring transparency as a necessary element to promote public participation and making information public within the context of this Chapter and in accordance with their respective law and practices.

#### ARTICLE 13.6

##### ***Public Information and Awareness***

1. In addition to Article 13.5 (Transparency), each Party shall encourage public debate with and among non-State actors as regards the development of law and policies covered by this Chapter.
2. Each Party shall promote public awareness of its law and standards covered by this Chapter, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders, and by taking steps to further the knowledge and understanding of workers, employers and their respective representatives.
3. Each Party shall ensure that access to relevant environmental information held by or for public authorities is provided to the public upon request and



shall take the necessary measures to actively disseminate such information to the public by electronic means.

4. Each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns. Each Party shall inform its respective civil society organisations, in accordance with its law and practices, of those submissions it considers relevant through the consultative mechanisms referred to in Article 13.31 (Sub-Committee on Trade and Sustainable Development).

#### ARTICLE 13.7

##### ***Scientific and Technical Information***

1. When preparing and implementing measures related to the environment or labour conditions that affect trade or investment between them, the Parties shall take account of relevant and available scientific, technical and other information such as traditional knowledge, and relevant international standards, guidelines and recommendations.
2. The Parties acknowledge that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

#### ARTICLE 13.8

##### ***Cooperation***

1. The Parties recognise the importance of cooperation on trade-related and investment-related aspects of labour and environmental issues in order to achieve the objectives of this Chapter. Therefore, the Parties agree to dialogue and to consult with each other with regard to trade-related sustainable development issues of mutual interest. Each Party may, as appropriate, invite the participation of its social partners or other relevant stakeholders in relevant cooperation projects and in identifying potential areas of cooperation.
2. Accordingly, the Parties may cooperate on issues of mutual interest in areas such as:
  - (a) improved understanding of the effects of economic activity and market forces on the environment and labour conditions;
  - (b) the international promotion and the effective application of fundamental principles and rights at work referred to in Article 13.13 (International Labour Standards and Agreements), and the ILO

Decent Work Agenda, including on the interlinkages between trade and full and productive employment, core labour standards, decent work in global supply chains, social protection, social dialogue, and gender equality;

- (c) dialogue and information-sharing on the labour, gender equality and environmental provisions of their respective trade agreements, and the implementation thereof; and
  - (d) monitoring and reviewing the impact of the implementation of this Agreement on sustainable development and women's economic empowerment.
3. The Parties shall strive to strengthen their cooperation on trade-related and investment-related labour and environmental issues of mutual interest in relevant bilateral and multilateral fora in which they participate such as ILO, WTO, OECD, United Nations Environment Programme and fora established under multilateral environmental agreements. They may, as appropriate, establish cooperative arrangements with such organisations to draw on their expertise and resources.

#### ARTICLE 13.9

##### *Means of Cooperation*

1. The Parties shall strive to cooperate on issues of mutual interest to promote the objectives of this Chapter through actions such as:
- (a) the exchange of information on best practices, events, activities and initiatives;
  - (b) the exploration of collaboration in initiatives regarding third parties;
  - (c) technical exchanges, research projects, studies, reports, conferences and workshops; and
  - (d) any other form of cooperation deemed appropriate.
2. Cooperation under this Chapter shall be subject to the availability of funds and resources of each participating Party. Costs of cooperation under this Chapter shall be borne by the Parties concerned, in a manner to be agreed between them.

## ARTICLE 13.10

### ***Promotion of Trade and Investment Favouring Sustainable Development***

1. The Parties recognise the important role of trade and investment in promoting sustainable development in all its dimensions.
2. Pursuant to paragraph 1, the Parties undertake to continue to:
  - (a) promote and facilitate foreign investment and trade in, and dissemination of, goods and services that contribute to sustainable development, including those goods and services subject to ecological, fair or ethical trade schemes;
  - (b) promote and encourage the development and use of sustainability certification schemes that enhance transparency and traceability throughout the supply chain in line with domestic priorities;
  - (c) promote trade and investment policies that support the objectives of employment, social dialogue, and rights at work;
  - (d) promote trade and investment in goods and services that contribute to sustainable development, such as renewable energy and energy-efficient products and services, including through addressing related non-tariff barriers, or the adoption of policy frameworks which will support the use of the best practicable environmental options, as appropriate;
  - (e) recognise the importance of trade and investment to a more resource-efficient and circular economy, promote life-cycle management of goods and the promotion of sustainable product value chains, including carbon accounting and end-of-life management, extended producer-responsibility, recycling and reduction of waste;
  - (f) promote sustainable procurement practices;
  - (g) encourage cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable development;
  - (h) encourage the integration of sustainability considerations in private and public consumption decisions; and
  - (i) promote the development, establishment, maintenance or improvement of environmental performance goals and standards.

#### ARTICLE 13.11

##### ***Responsible Business Conduct***

The Parties commit to promote responsible business conduct, including by encouraging relevant practices such as responsible management of supply chains by businesses, as well as providing supportive policy frameworks to encourage the uptake of relevant practices by businesses. In this regard, the Parties acknowledge the importance of dissemination, adherence, implementation and follow-up of internationally recognised principles and guidelines, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

#### ARTICLE 13.12

##### ***Anti-Corruption***

Recognising the need to build accountability, transparency and integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their resolve to eliminate bribery and corruption in international trade and investment and their commitment to implement their respective obligations of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on 17 December 1997, and the United Nations Convention against Corruption, done at New York on 31 October 2003. The Parties shall consult with a view to identifying and agreeing measures or areas of cooperation to prevent and combat bribery and corruption in matters affecting international trade and investment.

## SECTION 13.2

### TRADE AND LABOUR

#### ARTICLE 13.13

##### *International Labour Standards and Agreements*

1. The Parties shall continue to promote the development of international trade and investment in a way that is conducive to full and productive employment and decent work for all.
2. Each Party shall ensure that its labour law and practices embody and provide protection for the fundamental principles and rights at work. In this respect the Parties recall the obligations deriving from membership of the ILO and affirm their respective commitments to respect, promote and realise the principles concerning the fundamental rights as reflected in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, namely:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.
3. Each Party who is a member of the ILO:
  - (a) shall make continued and sustained efforts towards ratifying the fundamental ILO Conventions (as identified by the ILO Governing Body) and related Protocols;
  - (b) reaffirms its commitments under Article 5(1)(c) of ILO Convention 144 to the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given; and
  - (c) shall exchange information on their respective situations and advances regarding the ratification of the fundamental as well as priority and other ILO Conventions that are classified as up to date by the ILO.
4. Each Party reaffirms its commitments to effectively implement in its law and practices the ILO Conventions which each Party has ratified.

5. Each Party reaffirms its commitments to effectively implement in its law and practices the different provisions of the European Social Charter<sup>83</sup> that, as members of the Council of Europe, each Party has accepted respectively.
6. The Parties recognise the importance of the strategic objectives of the ILO Decent Work Agenda, as reflected in the ILO Declaration on Social Justice for a Fair Globalization of 2008.
7. The Parties commit to:
  - (a) promote the development and enhancement of measures for decent working conditions for all and related employment rights, including with regard to wages and earnings, hours, health and safety at work and other conditions of work;
  - (b) promote social dialogue on labour matters among workers and employers, and their respective organisations, and governments;
  - (c) the maintenance of a well-functioning labour enforcement system; and
  - (d) ensure non-discrimination in respect of working conditions;and each Party that is a member of the ILO shall do so in accordance with the ILO Declaration on Social Justice for a Fair Globalization of 2008.
8. The Parties note, as set out in the ILO Declaration on Social Justice for a Fair Globalization, that the violation of fundamental principles and rights at work shall not be invoked or otherwise used as a legitimate comparative advantage and that labour standards shall not be used for protectionist trade purposes.
9. The Parties recognise the value of international cooperation and agreements on labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation.
10. Affirming the value of policy coherence in decent work, including core labour standards, and high levels of labour protection, coupled with their effective enforcement, the Parties recognise the beneficial role that those areas can have on economic efficiency, innovation and productivity, including export performance.

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<sup>83</sup> The Council of Europe, established in 1949, adopted the European Social Charter in 1961, which was revised in 1996. For the United Kingdom, the reference to the European Social Charter in paragraph 5 refers to the original 1961 version.

#### ARTICLE 13.14

##### ***Non-Discrimination and Equality in the Workplace***

1. The Parties support the goals of eliminating discrimination in employment and occupation, and of promoting gender equality in relation to trade and the workplace.
2. Each Party affirms its commitments to effectively implement in its laws, policies and practices the international agreements pertaining to inclusive economic development, gender equality or non-discrimination to which they are a party.
3. The Parties commit to:
  - (a) promote policies that aim to ensure an inclusive labour market, equal rights and opportunities and address unlawful discrimination in relation to trade and the workplace;
  - (b) implement policies and measures to protect workers against employment discrimination on the basis of sex or gender, pregnancy, or sexual orientation;
  - (c) provide for job-protected leave for parents following birth or adoption of a child;
  - (d) work towards the elimination of gender wage gaps by promoting equal pay laws and policies with the aim to achieve equal pay; and
  - (e) promote policies that aim to eliminate all forms of gender-based violence and sexual harassment in the workplace.

#### ARTICLE 13.15

##### ***Access to Remedies and Procedural Guarantees***

Pursuant to Article 13.4 (Upholding Levels of Protection) each Party shall promote compliance with and shall effectively enforce its labour law, including by:

- (a) maintaining a system of labour enforcement in accordance with its international obligations aimed at securing the enforcement of legal provisions relating to working conditions and the protection of workers; and
- (b) ensuring that administrative and judicial proceedings are available to persons with a legally recognised interest in a particular matter who maintain that a right is infringed under its law, in order to permit effective action against infringements of its labour law, including appropriate remedies for violations of such law.

### **SECTION 13.3**

#### **WOMEN'S ECONOMIC EMPOWERMENT AND TRADE**

##### **ARTICLE 13.16**

###### ***Objectives***

1. The Parties acknowledge the importance of incorporating a gender perspective in the promotion of inclusive economic development and that gender-responsive policies are key elements to ensure more equitable participation of all in the domestic, regional and global economy and international trade, in order to achieve sustainable economic growth.
2. The Parties recognise that women's participation in international trade can contribute to advancing women's economic empowerment and economic independence. As such, the Parties agree to advance women's economic empowerment across this Agreement, and incorporate a gender perspective in their trade and investment relationship.
3. The Parties further recognise the importance of enhancing opportunities for women, including in their roles as workers, business owners and entrepreneurs, and appreciate the benefits of sharing their different experiences in and best practices for addressing the systemic barriers which may exist for women in international trade.

##### **ARTICLE 13.17**

###### ***International Commitments***

1. The Parties recognise the importance of international agreements relating to inclusive economic development, gender equality and women's economic empowerment
2. Each Party affirms its commitments to effectively implement in its laws, policies and practices the international agreements pertaining to inclusive economic development, gender equality and women's economic empowerment to which it is a party.
3. The Parties recognise the commitments made in the Joint Declaration on Trade and Women's Economic Empowerment on the occasion of the WTO Ministerial Conference in Buenos Aires in December 2017, including acknowledgement of the need to develop evidence-based interventions to address the barriers that limit opportunities for women in the economy.



## ARTICLE 13.18

### *Cooperative Activities*

The Parties may carry out cooperative activities to support the achievement of the objectives in Article 13.16 (Objectives) on issues of mutual interest. Cooperative activities shall be carried out with the inclusive participation of women. Areas of cooperation may include sharing experiences and best practices relating to:

- (a) improving access to trade for women including in their roles as workers, business owners and entrepreneurs through addressing specific barriers, including access to skills, technology and leadership or business networks, and addressing discrimination;
- (b) promoting labour practices that facilitate the integration, retention and progression of women in the labour market, as well as capacity-building and skill enhancement;
- (c) advancing and implementing policies and programmes which ensure equal pay for work of equal value;
- (d) recognising unpaid care work including parenting and other family co-responsibilities, and promoting access to work-life balance and flexible working arrangements, leave, and affordable childcare;
- (e) promoting financial inclusion as well as access to loans, financing and financial assistance;
- (f) increasing women's access to, participation and leadership in science, technology and innovation, including education in science, technology, engineering, mathematics and business insofar as they are related to trade;
- (g) conducting gender-based analysis, both quantitative and qualitative, of trade policies and for the monitoring of their effects on women as workers, entrepreneurs and business-owners;
- (h) improving methods and procedures for the development of sex or gender disaggregated data, the use of indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistics related to trade; and
- (i) promoting gender balance in trade missions and developing programmes which support women entrepreneurs to access markets.

ARTICLE 13.19

***Dispute Settlement***

No Party shall have recourse to dispute settlement under Articles 13.32 (Implementation and Dispute Resolution), 13.33 (Consultations) and 13.34 (Panel of Experts) of this Chapter or Chapter 16 (Dispute Settlement) for any matter arising under this Section.

**SECTION 13.4**  
**TRADE AND ENVIRONMENT**

ARTICLE 13.20

***Multilateral Environmental Agreements and Principles***

1. The Parties recognise the importance of international environmental governance and agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.
2. Each Party reaffirms its commitment to effectively implement in its law, policies and practices, the multilateral environmental agreements to which it is a party, and its adherence to environmental principles reflected in the international instruments referred to in Article 13.1 (Context and Objectives).
3. Action by the Parties relating to the environment shall be based on the following principles, as set out in the agreements referred to in paragraph 2, namely that environmental protection should be integrated into the making of policies, the principles that precautionary and preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay.
4. The Parties commit to consult and cooperate as appropriate with respect to environmental issues of mutual interest related to multilateral environmental agreements, and in particular, trade-related issues. This includes exchanging information on:
  - (a) the implementation of multilateral environmental agreements to which a Party is party;
  - (b) on-going negotiations of new multilateral environmental agreements; and
  - (c) each Party's respective views on becoming a party to additional multilateral environmental agreements.

ARTICLE 13.21

***Access to Remedies and Procedural Guarantees***

Pursuant to the obligations in Article 13.4 (Upholding Standards of Protection) each Party shall promote compliance with its environmental law, including by ensuring that:

- (a) in accordance with its law, its authorities competent to enforce environmental law give due consideration to alleged violations of environmental law brought to their attention; and
- (b) administrative or judicial proceedings are available to persons with a legally recognised interest in a particular matter or who maintain that a right is infringed under its law, in order to permit effective action against infringements of its environmental law, including appropriate remedies for violations of such law.

## ARTICLE 13.22

### *Trade and Climate Change*

1. The Parties recognise the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 (UNFCCC) and the Paris Agreement done at Paris on 12 December 2015 (Paris Agreement) in order to address the urgent threat of climate change, and the role of trade and investment in pursuing this objective. The Parties affirm their understanding that actions taken to meet this ultimate objective are consistent with this Agreement, and commit to working together to take actions to address climate change.
2. Pursuant to paragraph 1, the Parties:
  - (a) affirm their commitment to effectively implement the Paris Agreement and to take action to reduce greenhouse gas emissions with the aim of strengthening the global response to climate change and holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels;
  - (b) shall promote and facilitate the contribution of trade and investment in goods and services that are of particular relevance for climate change mitigation and adaptation and to the transition to a low carbon economy; and
  - (c) reaffirm their respective climate change commitments under the Paris Agreement and their long-term climate objectives to achieve net zero emissions or to become a low-emission society in accordance with their law.
3. The Parties recognise that enhanced cooperation is an important element to advance the objectives of this Article, and shall cooperate on issues of mutual interest, including at the UNFCCC and at the WTO in areas such as:

- (a) trade and climate policies, rules and measures contributing to the purpose and goals of the Paris Agreement and the transition to low greenhouse gas emissions and climate-resilient development;
  - (b) trade-related aspects of the current and future international climate change regime, as well as domestic climate policies and programmes relating to mitigation and adaptation, including issues relating to carbon markets, ways to address the adverse effects of trade on climate as well as means to promote energy efficiency and the development and deployment of low-carbon and other climate-friendly technologies;
  - (c) trade and investment in renewable energy technologies and energy-efficient goods and services;
  - (d) the cost-effective deployment of renewable energy, including offshore energy and in particular offshore wind generation in the North Sea;
  - (e) the development of decarbonisation technologies, such as for hydrogen, including markets for hydrogen and the development and promotion of carbon capture, utilisation and storage, including but not limited to the North Sea;
  - (f) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the International Maritime Organization to be implemented by ships engaged in international trade;
  - (g) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the International Civil Aviation Organization; and
  - (h) the global phase-out of inefficient fossil fuel subsidies.
4. The Parties shall encourage cooperation between their respective regulatory authorities and other competent authorities on issues of mutual interest relating to the matters referred to in subparagraphs (d) and (e) of paragraph 3, including information exchange, sharing of expertise and other such measures.

#### ARTICLE 13.23

##### *Air Quality*

1. The Parties recognise that air pollution is a serious threat to public health, ecosystem integrity, and sustainable development and note that reducing air pollution can help reduce emissions of greenhouse gases and contribute to addressing climate change and other environmental problems. Accordingly,

the Parties recognise the value of an integrated approach in addressing air pollution and climate change.

2. Noting that production, consumption and transport can cause air pollution and that air pollution can travel long distances, the Parties recognise the importance of reducing domestic and transboundary air pollution, and that cooperation can be beneficial in achieving these objectives. To that end, the Parties shall endeavour to reduce air pollution.
3. The Parties further recognise the importance of public participation and consultation in accordance with their respective law or policies in the development and implementation of measures to reduce air pollution and in ensuring access to air quality data. Accordingly, each Party shall make air quality data and information about its associated programmes and activities publicly available and shall seek to ensure that data and information are easily accessible and understandable to the public.
4. The Parties may cooperate on matters of mutual interest with respect to air quality, which may include:
  - (a) ambient air quality planning;
  - (b) modelling and monitoring, including spatial distribution of main sources of air pollution and their emissions;
  - (c) measurement and inventory methodologies for air quality and measurements for emissions; and
  - (d) reduction, control, and prevention technologies and practices.

#### ARTICLE 13.24

##### ***Ozone-Depleting Substances and their Alternatives***

1. The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. The Parties further recognise that the continued consumption and emission of certain substances can undermine efforts to address global environmental challenges including climate change. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol<sup>84</sup> and shall support an ambitious phase-down of hydrofluorocarbons according to the Kigali

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<sup>84</sup> For greater certainty, this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, 16 September 1987 (Montreal Protocol) and any existing amendments or adjustments to the Montreal Protocol (including the *Kigali amendment*, done at Kigali, 15 October 2016) (the Kigali Amendment), and any future amendments or adjustments to which a Party is a party.

Amendment, including by reducing the use of pre-charged equipment containing hydrofluorocarbons.

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policies, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available relevant information about its programmes and activities, including cooperative programmes, that are related to ozone-depleting substances and their alternatives.
3. The Parties may cooperate on matters of mutual interest related to ozone-depleting substances and their alternatives including:
  - (a) promoting the production and trade of environmentally friendly alternatives to ozone-depleting substances and hydrofluorocarbons;
  - (b) refrigerant management practices, policies and programmes including life-cycle management of coolants and refrigerants;
  - (c) methodologies for stratospheric ozone measurements;
  - (d) combating illegal trade in ozone-depleting substances and hydrofluorocarbons;
  - (e) emerging technologies for sustainable, climate-friendly cooling, refrigeration and heat pumps; and
  - (f) barriers to trade in, and uptake of sustainable, climate-friendly cooling, refrigeration and heat pump technologies.

#### ARTICLE 13.25

#### ***Trade and Biological Diversity***<sup>85</sup>

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, including by promoting sustainable trade or controlling or restricting trade in endangered species, in line with the relevant multilateral environmental agreements to which they are a party, and the decisions adopted thereunder, notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (Convention on Biological Diversity), and its protocols, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (CITES). The Parties also recognise the importance of nature-based solutions and ecosystem services provided by biodiversity, that climate change can contribute to

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<sup>85</sup> This Article shall apply to Liechtenstein to the extent of its competences under the Customs Treaty.

biodiversity loss, and that biologically diverse ecosystems can adapt better to the impacts of climate change and help to mitigate climate change through carbon sequestration and storage.

2. Pursuant to paragraph 1, each Party shall:

- (a) implement effective measures, including, where appropriate, consideration of the use of criminal sanctions, to combat illegal wildlife trade, poaching and trafficking in wildlife and wildlife products (including timber), as appropriate;
- (b) continue efforts to combat the illegal trade in ivory, including through domestic restrictions on commercial activities concerning ivory and goods containing ivory;
- (c) promote the inclusion of animal and plant species in the appendices to CITES where a species is threatened with extinction or may become threatened with extinction because of international trade;
- (d) encourage trade in products derived from a sustainable use of biological resources and contributing to the conservation of biodiversity; and
- (e) continue to take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular through measures to prevent or control the introduction and spread of invasive alien species.

3. The Parties shall work together on trade-related matters of mutual interest relevant to this Article, including in multilateral fora, such as CITES, the Convention on Biological Diversity and the Food and Agriculture Organization (FAO), as appropriate. Such cooperation may cover inter alia:

- (a) tackling illegal wildlife trade, including initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation;
- (b) supporting third country efforts to close their domestic ivory markets;
- (c) trade in natural resource-based products;
- (d) the valuation and assessment of ecosystems and related services; and
- (e) access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation consistent with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, adopted in Nagoya on 29 October 2010.



## ARTICLE 13.26

### ***Conservation of Marine Ecosystems and Species***

1. The Parties recognise the important role played by marine ecosystems in the natural sequestration and storage of carbon and the adverse impact of climate change on those ecosystems.
2. The Parties shall promote the conservation and sustainable use of marine ecosystems and species, including those in the areas beyond national jurisdiction.
3. The Parties may cooperate on matters of mutual interest with respect to the conservation of marine ecosystems and species.

## ARTICLE 13.27

### ***Sustainable Forest Management and Associated Trade*<sup>86</sup>**

1. The Parties recognise the importance of ensuring the conservation and sustainable management of forests and related ecosystems and the sustainable production of forest products and forest risk commodities in providing environmental, economic and social benefits for present and future generations, including by tackling climate change and reducing biodiversity loss resulting from deforestation and forest degradation, including from land use and land-use change for agricultural and mining activities.
2. The Parties acknowledge their role as major consumers, producers and traders of forest products and forest risk commodities. The Parties recognise the importance of sustainable supply chains in addressing greenhouse gas emissions, climate change and biodiversity loss and reducing the risk of the emergence of new diseases. The Parties further recognise the critical role of forests in providing numerous ecosystem services, including carbon storage, maintaining water quantity and quality, stabilising soils, and providing habitats for wild fauna and flora. Accordingly, and pursuant to paragraph 1, each Party shall:
  - (a) support effective forest law enforcement and governance, including by maintaining or strengthening government capacity and institutional frameworks in order to promote sustainable forest management and sustainable production of forest products and forest risk commodities;
  - (b) take measures to support the transition to sustainable production of forest products and forest risk commodities;

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<sup>86</sup> This Article shall apply to Liechtenstein to the extent of its competences under the Customs Treaty.

- (c) promote trade in forest products that have been legally harvested, and trade in forest risk commodities that have been produced on legally owned and used land, including promoting such trade with respect to third countries as appropriate;
  - (d) implement measures to prevent and combat illegal logging, illegal deforestation and forest degradation, and associated trade, throughout the entire value chain;
  - (e) promote the development and use of timber legality assurance instruments, also in third countries as appropriate, to ensure that only legally sourced timber and products thereof is traded between the Parties;
  - (f) promote or support initiatives to reduce demand for products resulting from illegal logging, illegal deforestation and forest degradation, and associated trade, as well as information sharing and cross-border cooperation;
  - (g) promote the effective use of CITES with particular regard to timber species; and
  - (h) cooperate on issues pertaining to conservation and sustainable management of forests, mangroves and peatlands where relevant through existing bilateral arrangements if applicable and in the relevant multilateral fora in which they participate, in particular through the UN collaborative initiative on Reducing Emissions from Deforestation and Forest Degradation (REDD+) as encouraged by the Paris Agreement.
3. The Parties shall cooperate and exchange information on issues of mutual interest, such as on ways to promote sustainable forest management and land use practices in support of the UN Sustainable Development Goals, including through:
- (a) initiatives designed to combat illegal logging, illegal deforestation and forest degradation, and associated trade, including third country assurance schemes;
  - (b) the encouragement of sustainable supply chains for forest products and forest risk commodities;
  - (c) methodologies for the assessment and monitoring of supply chains for forest products and forest risk commodities; and
  - (d) policy coherence on sustainable supply chains. This includes the development, introduction and implementation of consistent laws and regulations, including due diligence requirements for forest products

and forest risk commodities and through exchange of information and engagement in international fora, as appropriate.

#### ARTICLE 13.28

##### ***Trade and Sustainable Management of Fisheries and Aquaculture***

1. The Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems and the role of trade in pursuing these objectives.
2. Pursuant to paragraph 1, the Parties commit to:
  - (a) implement comprehensive, effective and transparent policies and measures to combat illegal, unreported and unregulated (IUU) fishing and aim to exclude IUU products from trade flows;
  - (b) implement in its law and policies their obligations under the international agreements to which they are a party;
  - (c) promote the use of relevant international guidelines including the FAO Voluntary Guidelines for Catch Documentation Schemes;
  - (d) cooperate bilaterally and in relevant international fora in the fight against IUU fishing by, *inter alia*, facilitating the exchange of information on IUU fishing activities;
  - (e) continue to pursue the objectives set out in the UN 2030 Agenda for Sustainable Development regarding fisheries subsidies; and
  - (f) promote the development of sustainable and responsible aquaculture.

#### ARTICLE 13.29

##### ***Trade in Waste and Chemicals and Prevention of Pollution***

The Parties shall cooperate on issues of mutual interest on trade-related aspects of resource use, waste, chemicals and pollution policies and measures bilaterally, regionally and in international fora, as appropriate and support a transition to a more circular economy. Such cooperation may cover *inter alia*:

- (a) promoting the environmentally-sound management of all types of waste;
- (b) reducing waste generation for example through reuse, repair, remanufacture, and recycling and encouraging the use of waste as a resource and as a result reducing land and sea-based sources of marine litter and microplastics;

- (c) promoting the sound management of chemicals;
- (d) combatting the illegal trade in waste and chemicals, in particular the illegal trade in electronic and plastic wastes in accordance with the Basel Convention on Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel on 22 March 1989;
- (e) combatting illegal shipments of all types of waste; and
- (f) preventing and controlling pollution, including pollution of a transboundary nature.

#### ARTICLE 13.30

##### ***Trade and Sustainable Agriculture and Food Systems***

1. The Parties recognise the importance of sustainable agriculture and food systems and the role of trade in achieving this objective. The Parties reiterate their shared commitment to achieve the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals.
2. Pursuant to paragraph 1, the Parties commit to:
  - (a) promote sustainable agriculture and associated trade;
  - (b) promote sustainable food systems; and
  - (c) cooperate, as appropriate, on issues concerning trade and sustainable agriculture and food systems, including through exchanging information, experience and good practices, conducting a dialogue on their respective priorities, and reporting on progress made in achieving sustainable agriculture and food systems.

## SECTION 13.5

### INSTITUTIONAL MECHANISMS

#### ARTICLE 13.31

##### *Sub-Committee on Trade and Sustainable Development*

1. The Parties hereby establish a Sub-Committee on Trade and Sustainable Development (Sub-Committee) comprising government representatives of the Parties. Each Party shall ensure that its representatives in the Sub-Committee have the appropriate expertise with respect to the issues to be discussed.
2. Meetings of the Sub-Committee shall be chaired jointly by one of the EEA EFTA States and the United Kingdom.
3. The Sub-Committee shall meet within one year of the entry into force of this Agreement. Thereafter, the Sub-Committee shall convene directly before or after the meetings of the Joint Committee unless the Parties decide otherwise. Meetings may take place physically or by any means of communication agreed by the Parties.
4. Each Party shall establish new, or convene existing, domestic groups, to seek views and advice on issues relating to this Chapter. Those groups shall include relevant independent representative organisations of civil society. Through such consultative mechanisms, stakeholders may submit opinions and make recommendations on any matter related to this Chapter on their own initiative.
5. The Sub-Committee may consider any matter arising under this Chapter. Its functions shall include;
  - (a) overseeing the implementation of this Chapter, including cooperative activities;
  - (b) taking stock of the progress achieved under this Chapter, including its operation and effectiveness;
  - (c) addressing in an integrated manner any matter of common interest relating to the interface between economic development, social development including gender equality, and environmental protection;
  - (d) exchanging information, discussing best practices and sharing implementation experience; and
  - (e) establishing and reviewing priorities for cooperation undertaken pursuant to this Chapter.

6. The Parties shall take into account the activities of relevant international organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations or bodies, and cooperate with any other subcommittee or body established under this Agreement on any matter related to this Chapter.
7. The Sub-Committee shall prepare a report on the results of each meeting. Reports of the Sub-Committee shall be made public, unless the Parties concerned decide otherwise.
8. Each regular meeting or dedicated session of the Sub-Committee may include a session with the public to discuss matters relating to the implementation of this Chapter.

#### ARTICLE 13.32

##### ***Implementation and Dispute Resolution***

1. The Parties shall designate contact points for the implementation of this Chapter. Parties shall inform each other of their respective contact point in writing. The contact points are responsible for the communication between the United Kingdom and each of the EEA EFTA States regarding the scheduling and the organisation of the Sub-Committee meetings described in Article 13.31 (Sub-Committee on Trade and Sustainable Development), and the cooperative activities under the Chapter.
2. The Parties shall designate women's economic empowerment and trade contact points. The women's economic empowerment and trade contact points shall be responsible for communication between each of the EEA EFTA States and the United Kingdom on matters relating to the objectives of Section 13.3 (Women's Economic Empowerment and Trade). The Parties shall inform each other in writing of their respective contact points for women's economic empowerment and trade.
3. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter. Should any dispute or other matter arise under this Chapter, the Parties concerned shall make every attempt to reach a mutually satisfactory resolution of the matter.
4. For any dispute or other matter that arises under this Chapter, the Parties shall only have recourse to the rules and procedures provided in this Chapter. The Parties concerned may nevertheless and if they so agree, have access to good offices, conciliation and mediation procedures. Such procedures may begin and be terminated at any time and shall be confidential and without prejudice to the rights of the parties concerned in any other proceedings. They may continue while proceedings of a panel of experts established in accordance with this Chapter are in progress.

5. The Parties shall provide their stakeholders with the opportunity to share comments and make recommendations regarding the implementation of this Chapter.

#### ARTICLE 13.33

##### *Consultations*

1. A Party may through the contact points referred to in Article 13.32 (Implementation and Dispute Resolution) request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The Party requesting consultations shall at the same time notify in writing the other Parties of the request.
2. The Party to which the request is made shall reply within ten days from the receipt of the request. Consultations shall take place in the Sub-Committee on Trade and Sustainable Development, unless the Parties making and receiving the request for consultations agree otherwise.
3. The requesting Party shall present the matter clearly in its request, identify the question or specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.
4. The Parties concerned shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
5. If both the requesting Party and the responding Party consent, the Parties may seek advice from relevant international organisations, bodies or experts.
6. If relevant, the Parties concerned may seek the advice of their stakeholders.
7. The Parties concerned shall enter into consultations no later than 30 days after the date of receipt of the request. Consultations shall be deemed to be concluded no later than 60 days after the date of receipt of the request unless the Parties concerned agree otherwise.
8. Consultations may be held in person or by any other means of communication agreed by the Parties concerned.
9. The Parties concerned shall inform the other Parties of any mutually agreed resolution of the matter.
10. Any solution or decision reached by the Parties concerned shall be made publicly available.

## ARTICLE 13.34

### *Panel of Experts*

1. If the Parties concerned fail to reach a mutually satisfactory resolution of a matter arising under this Chapter through consultations under Article 13.33 (Consultations), a Party concerned may 90 days after the receipt of a request for consultations under Article 13.33 (Consultations) request that a panel of experts be convened to examine the matter by delivering a written request to the contact point of the other Party concerned. Articles 16.6 (Establishment of a Panel), 16.7 (Composition of a Panel), 16.11 (Panel Proceedings)<sup>87</sup>, 16.21 (Mutually Agreed Solution), 16.23 (Time Period) and 16.24 (Expenses) of Chapter 16 (Dispute Settlement) shall apply *mutatis mutandis*, except as otherwise provided for in this Article.
2. Subject to the provisions of this Chapter, the Parties shall apply the Rules of Procedure and Code of Conduct set out in Article 16.25 (Rules of Procedure and Code of Conduct) of Chapter 16 (Dispute Settlement), unless the Parties decide otherwise.
3. The panellists shall have relevant expertise, including in international trade law and international labour law or international environmental law. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the disagreement, or be affiliated with the government of a Party. They must comply with the Rules of Procedures and Code of Conduct referred to in paragraph 2.
4. Unless the Parties concerned decide otherwise, within ten days of the date of the selection of the panellists, the terms of reference of the panel of experts are: to examine, in the light of the relevant provisions of this Chapter, the matter or matters referred to in the request for the establishment of the panel of experts, to make findings on the conformity of the measure with the relevant provisions, together with the reasons, as well as recommendations, if any, for the resolution of the matter and to issue a report, in accordance with this Article.
5. The panel of experts should seek information or advice from relevant international organisations or bodies including any pertinent applicable interpretative guidance, findings or decisions adopted by those international organisations or bodies. Any information obtained shall be submitted to the Parties concerned for their comments.
6. The panel of experts may request written submissions or any other information from persons with specialised knowledge of the matter. Any

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<sup>87</sup> For greater certainty paragraph 9 of Article 16.11 (Panel Proceedings) of Chapter 16 (Dispute Settlement) does not apply to the report of the panel of experts, including any recommendations in the report.



information obtained shall be submitted to the Parties concerned for their comments.

7. The panel of experts shall submit an interim report containing its findings and recommendations to the Parties concerned within 90 days from the date of establishment of the panel of experts. A Party concerned may submit written comments to the panel of experts on its interim report within 45 days from the date of the issuance of the interim report. After considering any such written comments, the panel of experts may modify the interim report and make any further examination it considers appropriate. The panel of experts shall present to the Parties concerned a final report within 60 days after the date of issuance of the interim report. The Parties concerned shall make the final report publicly available within 30 days of its delivery.
8. If the final report of the panel of experts determines that a Party has not conformed with its obligations under this Chapter, the Parties concerned shall discuss appropriate measures or, if appropriate, to decide upon a mutually satisfactory action plan to implement the final report of the panel of experts. Such measures shall be communicated to the other Parties within three months from the date of issuance of the final report and shall be monitored by the Sub-Committee on Trade and Sustainable Development.
9. The responding Party shall inform in a timely manner the requesting Party of its decision on any actions or measure to be implemented. Furthermore the requesting party shall inform the responding Party in a timely manner of any other action or measure it may decide to take, as a follow-up to the final report, to encourage the resolution of the matter in a manner consistent with this Agreement.
10. Each Party concerned shall in a timely manner inform the stakeholders it deems relevant of its decisions on any actions or measures to be implemented. This shall be done in accordance with existing mechanisms or through other mechanisms deemed appropriate by each Party.
11. Where a procedural question arises, the panel of experts may, after consultation with the Parties concerned, adopt an appropriate procedure.

## CHAPTER 14

### EXCEPTIONS

#### ARTICLE 14.1

##### *General Exceptions*

1. For the purposes of Section 2.1 (General Provisions on Trade in Goods), Annex I (Rules of Origin), Section 2.2 (Technical Barriers to Trade), Section 2.3 (Sanitary and Phytosanitary Measure), Section 2.4 (Customs and Trade Facilitation), and Section 3.2 (Investment Liberalisation), Article XX of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 3 (Services and Investment), Chapter 4 (Digital Trade), Chapter 5 (Capital Movements, Payments and Transfers) and Chapter 12 (Recognition of Professional Qualifications), paragraphs (a), (b) and (c) of Article XIV of GATS shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions referred to under paragraphs 1 and 2 of this Article:
  - (a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of Article XIV of GATS include environmental measures, which are necessary to protect human, animal or plant life and health;
  - (b) environmental measures include climate change mitigation measures;
  - (c) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources<sup>88</sup>; and
  - (d) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994 or under point (b) of Article XIV of GATS.

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<sup>88</sup> 'Non-living exhaustible natural resources' includes clean air and a global atmosphere with safe levels of greenhouse gases.

## ARTICLE 14.2

### *Security Exceptions*

1. Nothing in this Agreement shall be construed:
  - (a) as requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests;
  - (b) as preventing a Party from taking any action, which it considers necessary for the protection of its essential security interests, including action:
    - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (ii) relating to the production of or trade in arms, ammunition and implements of war as well as to the production of or trade in other goods and materials as carried out directly or indirectly for the purpose of supplying military and other security establishments;
    - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning military and other security establishments; or
    - (iv) taken in time of war or other emergency in international relations; or
  - (c) as preventing a Party from taking any action in pursuance of its obligations under the United Nations Charter for the purpose of maintaining international peace and security.

## ARTICLE 14.3

### *Taxation*

1. For the purposes of this Article:
  - (a) “direct taxes” means all taxes on income or capital, including taxes on gains from the alienation of property, on estates, inheritances and gifts, on wages or salaries paid by enterprises, and on capital appreciation;
  - (b) “tax convention” means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation; and

- (c) “taxes” and “taxation measures” include excise duties,<sup>89</sup> but do not include:
- (i) a “customs duty” as defined in paragraph (b) of Article 2.3 (Definitions) of Section 2.1 (General Provisions on Trade in Goods); or
  - (ii) the measures listed in subparagraphs (ii) or (iii) of that definition.
2. Except as provided in this Article, nothing in this Agreement applies to taxation measures.<sup>90</sup>
3. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.
4. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention between two or more Parties, the issue shall be referred by those Parties to the competent authorities under, or in respect of, that tax convention. Those competent authorities shall have 12 months beginning with the date of that referral to make a determination as to the existence and extent of any inconsistency. If those competent authorities agree, that period may be extended by no more than a further 6 months. Only upon expiry of the 12 months, or other agreed time period (or where the competent authorities determine that no such inconsistency exists), can a panel be established under this Agreement to consider a dispute related to the measure. A panel established under this Agreement shall accept as binding a determination made by those competent authorities under this paragraph.
5. Notwithstanding paragraph 3:
- (a) Article 2.4 (National Treatment on Internal Taxation and Regulation) of Section 2.1 (General Provisions on Trade in Goods), and such other measures as are necessary to give effect to that Article, apply to taxation measures to the same extent as does Article III of GATT 1994 including its interpretative notes; and

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<sup>89</sup> Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Article shall not apply to Liechtenstein with respect to excise duties.

<sup>90</sup> For greater certainty, this Article does not preclude the adoption or enforcement by a Party of taxation measures under Article 14.1 (General Exceptions) and Article 14.2 (Security Exceptions).

- (b) Article 2.7 (Export Duties, Taxes or other Charges) and Article 2.8 (Fees and Charges) of Section 2.1 (General Provisions on Trade in Goods) applies to taxation measures.
6. Subject to paragraph 3, the following provisions apply to taxation measures:
- (a) Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation);
  - (b) Article 3.8 (Most-Favoured-Nation Treatment) of Section 3.2 (Investment Liberalisation);
  - (c) Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services);
  - (d) Article 3.17 (Most-Favoured-Nation Treatment) of Section 3.3 (Cross-Border Trade in Services); and
  - (e) without prejudice to the rights and obligations of the Parties under paragraph 5, Article 3.10 (Performance Requirements) of Section 3.2 (Investment Liberalisation).
7. But nothing in the Articles referred to in paragraph 6 applies to:
- (a) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
  - (b) the adoption, maintenance or enforcement of any taxation measure aimed at ensuring the equitable or effective<sup>91</sup> imposition or collection of direct taxes, subject to the requirement that the taxation measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment; or
  - (c) the adoption, maintenance or enforcement of any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties.

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<sup>91</sup> The footnote to Article XIV(d) of GATS shall apply and is hereby incorporated into and made part of this Agreement *mutatis mutandis*.

**CHAPTER 15**  
**INSTITUTIONAL PROVISIONS**

ARTICLE 15.1

*Joint Committee*

1. The Parties hereby establish a Joint Committee (Joint Committee) comprising senior representatives of each Party.
2. The Joint Committee shall:
  - (a) supervise and review the implementation and operation of this Agreement;
  - (b) keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties;
  - (c) oversee and monitor the implementation of objectives relating to advancing women's economic empowerment in accordance with this Agreement;
  - (d) oversee any further development of this Agreement;
  - (e) supervise the work of all sub-committees and working groups established under this Agreement. Except where otherwise provided for in this Agreement, sub-committees and working groups shall work under a mandate agreed by the Joint Committee;
  - (f) endeavour to solve problems and resolve disputes that may arise regarding the interpretation or application of this Agreement; and
  - (g) consider any other matter that may affect the operation of this Agreement.
3. The Joint Committee may:
  - (a) consider amending this Agreement in the event of developments in the relations between the EEA EFTA States and the United Kingdom as well as between each of them and third parties relevant to this Agreement, in order where appropriate to align it with the relevant developments;
  - (b) decide to set up sub-committees and working groups to assist it in carrying out its tasks, and merge or dissolve any such sub-committees or working groups;

- (c) recommend to the Parties any amendments to this Agreement or adopt decisions to amend this Agreement, as provided for in this Agreement; and
  - (d) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all subsidiary bodies established by the Joint Committee, including panels established under Chapter 16: (Dispute Settlement).
- 4. The Joint Committee may take decisions as provided for in this Agreement. On other matters the Joint Committee may make recommendations. The decisions taken shall be binding on the Parties. Each Party shall take the measures necessary to implement the decisions taken.
- 5. The Joint Committee shall take decisions and make recommendations by consensus and may adopt these either by meeting in person or in writing. The Joint Committee may adopt decisions and make recommendations regarding issues related to only one or several EEA EFTA States and the United Kingdom. In this case, consensus shall only involve, and the decision or recommendation shall only apply to, those Parties.
- 6. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally once a year. Its meetings shall be chaired jointly by one of the EEA EFTA States and the United Kingdom. The Joint Committee may meet in person or by other means, as agreed by the Parties.
- 7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days from the receipt of the request, unless the Parties agree otherwise.
- 8. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the date that the last Party notifies that its internal requirements have been fulfilled, unless otherwise agreed. The Joint Committee may decide that the decision enters into force for those Parties that have fulfilled their internal requirements, provided that the United Kingdom is one of those Parties.
- 9. The Joint Committee shall adopt its own rules of procedure.
- 10. The following sub-committees are established under this Agreement:
  - (a) Sub-Committee on Trade in Goods;
  - (b) Sub-Committee on Technical Barriers to Trade ;
  - (c) Sub-Committee on Sanitary and Phytosanitary Measures;

- (d) Sub-Committee on Services and Investment; and
- (e) Sub-Committee on Trade and Sustainable Development.

They shall act by consensus.



## **CHAPTER 16**

### **DISPUTE SETTLEMENT**

#### ARTICLE 16.1

##### ***Objective***

The objective of this Chapter is to establish an effective and efficient mechanism for settling disputes between the Parties<sup>92</sup> concerning the interpretation and application of the provisions of this Agreement with a view to reaching a mutually agreed solution.

#### ARTICLE 16.2

##### ***Scope***

Unless otherwise provided for in this Agreement, this Chapter applies with respect to the settlement of any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement.

#### ARTICLE 16.3

##### ***Request for Information***

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Articles 16.4 (Consultations) or 16.5 (Good Offices, Conciliation and Mediation) respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

#### ARTICLE 16.4

##### ***Consultations***

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Article.

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<sup>92</sup> For the purposes of this Chapter, the terms “Party”, “party to the dispute”, “complaining Party” and “Party complained against” can denote one or more Parties.

2. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise.
3. The parties to the dispute shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
4. The parties to the dispute shall enter into consultations no later than 30 days, and 15 days for urgent matters, after the date of receipt of the request. Consultations shall be deemed to be concluded no later than 45 days after the date of receipt of the request unless the parties to the dispute agree otherwise. Where both parties to the dispute consider that the case concerns matters of urgency, consultations shall be deemed to be concluded no later than 25 days after the date of receipt of the request unless the parties to the dispute agree otherwise.
5. Consultations may be held in person or by any other means of communication agreed by the parties to the dispute.
6. Consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.
7. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

## ARTICLE 16.5

### ***Good Offices, Conciliation and Mediation***

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may begin and be terminated at any time. They may continue while proceedings of a panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.

## ARTICLE 16.6

### *Establishment of a Panel*

1. The Party that sought consultations pursuant to Article 16.4 (Consultations) may request the establishment of a panel if:
  - (a) the other Party does not respond to the request for consultations within 10 days after the date of its receipt, or does not enter into consultations within 30 days after the date of receipt of the request;
  - (b) the parties to the dispute agree not to enter into consultations; or
  - (c) the parties to the dispute fail to resolve the dispute through consultations within 45 days, or within 25 days in cases of urgency, after the date of receipt of the request for consultations, unless the parties to the dispute agree otherwise.
2. The request for the establishment of a panel pursuant to paragraph 1 shall be made in writing to the Party complained against. In its complaint, the complaining Party shall explicitly identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.
3. A copy of any request to establish a panel made under paragraph 1 shall be communicated to the other Parties.
4. Where more than one Party requests the establishment of a panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single panel should be established to examine complaints relating to the same matter.

## ARTICLE 16.7

### *Composition of a Panel*

1. The panel shall be composed of three arbitrators. One of the arbitrators shall chair the panel. The chair of the panel shall not be a national or permanent resident of either party to the dispute.
2. On receipt of the request for the establishment of a panel by the Party complained against, the parties to the dispute shall consult with a view to agreeing on the composition of the panel.
3. If the parties to the dispute do not reach agreement on the arbitrators other than the chair of the panel within 10 days of receipt of the request to establish a panel, or any extension agreed in writing, each party to the dispute shall appoint an arbitrator to the panel. The arbitrators shall be appointed within 10 days of the expiry of the first time period mentioned in this paragraph (as extended, if so agreed).

4. If the complaining Party fails to appoint its arbitrator in accordance with paragraph 3, the dispute settlement proceedings shall lapse.
5. If the Party complained against fails to appoint its arbitrator in accordance with paragraph 3, the complaining Party shall be entitled, within 10 days of the expiry of the second time period mentioned in that paragraph, to request that the appointing authority appoint an arbitrator within 15 days of receiving the request. If the complaining Party fails to make such a request, the dispute settlement proceedings shall lapse.
6. If the parties to the dispute do not reach agreement on the chair of the panel within 50 days of receipt of the request to establish a panel, or any extension agreed in writing, the two arbitrators appointed in accordance with paragraphs 2 to 5 shall, within 10 days of the appointment of the second of them, appoint the third arbitrator who shall chair the panel.
7. If the chair has not been appointed within the second time period specified in paragraph 6, either party to the dispute shall be entitled, within 10 days, to request that the appointing authority appoint the arbitrator that shall chair the panel within 15 days of receiving the request. If no such request is made, the dispute settlement proceedings shall lapse.
8. A person being approached in connection with a possible appointment as an arbitrator, shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose such circumstances to the parties to the dispute and the other arbitrators unless they have already been informed.
9. Any arbitrator may be challenged if a party considers that there are circumstances that give rise to justifiable doubts as to the member's independence or impartiality or the member has otherwise not complied with any Code of Conduct. If a party to the dispute does not agree with the challenge or the challenged member of the panel does not withdraw, the party making the challenge may request the appointing authority to decide on the challenge. In the event of a successful challenge, the member in question shall be replaced.
10. If any arbitrator is unavailable, withdraws, or needs to be replaced, the replacement shall be selected in accordance with the procedure set out in this Article.
11. The date of establishment of the panel shall be the date on which the last arbitrator is appointed.
12. The Secretary-General of the Permanent Court of Arbitration shall act as the appointing authority.

## ARTICLE 16.8

### *Qualifications of Arbitrators*

All arbitrators shall:

- (a) have expertise in international law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, any Party, nor have dealt with the case in any capacity;
- (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and
- (d) comply with any Code of Conduct.

## ARTICLE 16.9

### *Terms of Reference*

1. Unless the parties to the dispute agree otherwise, no later than 10 days after the date of the establishment of the panel, the terms of reference of the panel shall be to:
  - (a) examine, in the light of the relevant provisions of this Agreement, the matter or matters referred to in the request for the establishment of the panel;
  - (b) make findings of law and fact and determinations on the conformity of the measure or measures at issue with the relevant provisions of this Agreement, together with the reasons therefor. The panel may suggest ways in which the Party complained against could implement the determinations; and
  - (c) issue a written report in accordance with Article 16.14 (Panel Reports).
2. If the parties to the dispute agree on other terms of reference than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than three days after their agreement.

## ARTICLE 16.10

### *Urgent Cases*

In cases of urgency, including those related to perishable goods, the panel and the parties to the dispute shall make every effort to accelerate the proceedings to the greatest extent possible. If a party to the dispute so requests, the panel shall decide, no later than 10 days after the date of its establishment, whether the dispute contains matters of urgency.

## ARTICLE 16.11

### *Panel Proceedings*

1. The panel should consult regularly with the parties to the dispute and provide adequate opportunities for achieving a mutually agreed solution. In doing so, the panel shall always ensure that it shares information or makes requests of all parties to the dispute simultaneously.
2. Any hearing of the panel shall be open to the public unless the parties to the dispute agree otherwise or the arbitration panel decides to close the hearing for the duration of any discussion of confidential information. Hearings held in closed session shall be confidential.
3. The parties to the dispute shall mutually determine the location of the hearing. If the parties to the dispute are unable to so agree the hearings shall be held in Geneva, Switzerland.
4. The panel and the parties to the dispute shall treat as confidential any information submitted by a Party to the panel which that Party has designated as confidential. Where that Party submits a confidential version of its written submissions to the panel, it shall also, on request of any other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public with an explanation as to why the non-disclosed information is confidential.
5. The deliberations of the panel shall be kept confidential.
6. The parties to the dispute shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. All documents or information submitted by a Party to the panel, shall, at the same time, be transmitted by that Party to the other party to the dispute. A written submission, request, notice or other document shall be considered received when it has been delivered to the addressee through diplomatic channels.
7. The interim report and the final report shall be drafted without the presence of the Parties, and in light of the information provided and the statements

made. The arbitrators shall assume full responsibility for the drafting of the reports and shall not delegate this responsibility to any other person.

8. The panel shall attempt to make its decisions, including its final report, by consensus. It may also make its decisions, including its final report, by majority vote where a decision cannot be arrived at by consensus. Dissenting opinions of arbitrators shall not be published.
9. The decisions of the panel shall be final and binding on the parties to the dispute. They shall be unconditionally accepted by the parties to the dispute. They shall not add to or diminish the rights and obligations of any Party under this Agreement.
10. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

#### ARTICLE 16.12

##### ***Rules of Interpretation***

The panel shall interpret the relevant provisions of this Agreement in accordance with customary rules of interpretation of public international law including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.

#### ARTICLE 16.13

##### ***Receipt of Information***

1. On request of a party to the dispute, or on its own initiative, the panel may seek from the parties to the dispute relevant information it considers necessary and appropriate. The parties to the dispute shall respond promptly and fully to any request by the panel for information.
2. On request of a party to the dispute, or on its own initiative, the panel may seek from any source any information, including confidential information, it considers appropriate. The panel also has the right to seek the opinion of experts as it considers appropriate.
3. Natural persons of a Party or legal persons established in a Party may submit *amicus curiae* briefs to the panel.
4. Any information obtained by the panel under this Article shall be made available to the parties to the dispute and the parties to the dispute may submit comments on that information to the panel.

## ARTICLE 16.14

### ***Panel Reports***

1. The panel shall issue an interim report to the parties to the dispute setting out its findings and determinations, together with the reasons therefor, no later than 100 days after the date of its establishment.
2. Each party to the dispute may submit to the panel written comments and request the panel to review precise aspects of the interim report no later than 15 days after the date of issuance of the interim report. After considering any written comments and requests by each party to the dispute on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.
3. In cases of urgency,
  - (a) the panel shall make every effort to issue its interim report no later than 60 days after the date of its establishment; and
  - (b) each party to the dispute shall make every effort to submit to the panel any written comments or requests for it to review precise aspects of the interim report no later than 10 days after the date of issuance of the interim report.
4. The panel shall issue its final report to the parties to the dispute no later than 30 days after the date of issuance of the interim report.
5. In cases of urgency, the panel shall make every effort to issue its final report no later than 15 days after the date of issuance of the interim report.
6. The final report shall address any written comments and requests made by the parties to the dispute on the interim report.
7. The parties to the dispute shall make the final report publicly available in its entirety no later than 10 days after the date of its issuance subject to the protection of confidential information.

## ARTICLE 16.15

### ***Compliance with the Final Report***

1. The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report issued pursuant to Article 16.14 (Panel Reports).
2. If it is impracticable to comply immediately, the Party complained against shall, no later than 30 days after the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time



for compliance with the final report and the parties to the dispute shall endeavour to agree on the reasonable period of time required for compliance. If there is disagreement between the parties to the dispute on the length of the reasonable period of time, the complaining Party may, no later than 20 days after the date of receipt of the notification made in accordance with the first sentence of this paragraph by the Party complained against, request in writing the original panel<sup>93</sup> to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against. The original panel shall notify its determination to the parties to the dispute no later than 30 days after the date of submission of the request.

#### ARTICLE 16.16

##### ***Compliance Review***

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time for compliance with the final report, notify the complaining Party of any measures taken to comply with the final report.
2. Where there is disagreement on the existence of measures taken to comply with the final report, or their consistency with the final report, the complaining Party may request in writing the original panel to examine the matter. That request shall be notified simultaneously to the Party complained against.
3. The request referred to in paragraph 2 shall provide the factual and legal basis for the complaint, including the specific measures at issue, in such a manner as to clearly present how such measures do not comply with the final report.
4. The panel shall notify its decision to the parties to the dispute no later than 90 days after the date of referral of the matter referred to in paragraph 2.

#### ARTICLE 16.17

##### ***Temporary Remedies in Case of Non-Compliance***

1. The Party complained against shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory compensation or any alternative arrangement if:

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<sup>93</sup> For greater certainty, references in this Chapter to the original panel shall include any replacement arbitrators that have been designated pursuant to paragraph 10 of Article 16.7 (Composition of a Panel).

- (a) in accordance with Article 16.16 (Compliance Review) the original panel finds that the Party complained against has not complied with the final report;
  - (b) the Party complained against fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time; or
  - (c) the Party complained against notifies the complaining Party that it does not intend to or it is impracticable to comply with the final report within the reasonable period of time determined in accordance with paragraph 2 of Article 16.15 (Compliance with the Final Report).
- 2. If the complaining Party decides not to make a request in accordance with paragraph 1 in the case where any of the conditions in paragraphs 1(a)-(c) are met or if a request is made and no mutually satisfactory compensation nor any alternative arrangement has been agreed within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may notify the Party complained against in writing that they intend to suspend the application to the Party complained against of concessions or other obligations granted under this Agreement. The notification shall specify the level of intended suspension of concessions or other obligations.
- 3. The complaining Party shall have the right to implement the suspension of concessions or other obligations 15 days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration in accordance with paragraph 6.
- 4. In considering what concessions or other obligations to suspend, the complaining Party shall apply the following principles and procedures:
  - (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement;
  - (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors that are subject to dispute settlement in accordance with Article 16.2 (Scope); and
  - (c) concessions or other obligations under Chapter 3 (Services and Investment) in respect of financial services may not be suspended under this Article unless the final report referred to in Article 16.14 (Panel Reports) concerns the interpretation and application of

concessions or other obligations under Chapter 3 (Services and Investment) in respect of financial services.

5. The suspension of concessions or other obligations or the compensation or any alternative arrangement shall be temporary and shall only apply until the measure found to be inconsistent with this Agreement in the final report has been removed or the parties to the dispute have solved the dispute otherwise.
6. If the Party complained against considers that the suspension of concessions or other obligations does not comply with paragraph 4, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify the parties to the dispute of its decision on the matter no later than 30 days after the date of submission of the request. Concessions or other obligations shall not be suspended until the original panel has notified its decision. The suspension of concessions or other obligations shall be consistent with the decision.

#### ARTICLE 16.18

##### ***Compliance Review after the Adoption of Temporary Remedies***

At the request of a party to the dispute, the original panel shall rule on the conformity with the final report of any measures taken to comply with the final report adopted after the suspension of concessions or other obligations or the compensation or any alternative arrangement and, in light of such ruling, whether the suspension of concessions or other obligations or the compensation or any alternative arrangement should be terminated or modified. The ruling of the panel should be given within 30 days from the receipt of that request.

#### ARTICLE 16.19

##### ***Suspension and Termination of Proceedings***

1. Where the parties to the dispute agree, a panel may suspend its work at any time for a period not exceeding 12 months. The panel shall resume the proceedings at any time upon the joint request of the parties to the dispute or at the end of the agreed suspension period on the written request of one of them. If the work of a panel has been suspended for more than 12 months, the panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.
2. The parties to the dispute may agree at any time to terminate the proceedings of the panel. The parties to the dispute shall jointly notify such agreement to the chair of the panel.

## ARTICLE 16.20

### *Administration of the Dispute Settlement Procedure*

The parties to the dispute may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

## ARTICLE 16.21

### *Mutually Agreed Solution*

1. The parties to the dispute may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 16.2 (Scope).
2. If a mutually agreed solution is reached during panel proceedings or a mediation procedure, the parties to the dispute shall jointly notify the agreed solution to the chair of the panel or the mediator and the other Parties. Upon such notification, the panel proceedings or the mediation procedure shall be terminated.

## ARTICLE 16.22

### *Choice of Forum*

1. If a dispute regarding the same matter arises under both this Agreement and under another international trade agreement to which the parties to the dispute are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once a Party has selected the forum and initiated dispute settlement proceedings, that Party shall not initiate dispute settlement proceedings under this Chapter or under another international agreement referred to in paragraph 1 unless the forum selected first fails to make findings for jurisdictional or procedural reasons.
3. For the purpose of paragraph 2:
  - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with paragraph 1 of Article 16.6 (Establishment of a Panel);
  - (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the Dispute Settlement Understanding; and

- (c) dispute settlement proceedings under any other trade agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement panel in accordance with the relevant provisions of that agreement.

#### ARTICLE 16.23

##### ***Time Period***

1. All time limits laid down in this Chapter, including the limits for panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.
2. Any time period referred to in this Chapter may be modified for a particular dispute by agreement of the parties to that dispute. The panel may at any time propose to the parties to the dispute to modify any time period referred to in this Chapter, stating the reasons for the proposal.
3. If a panel considers that it cannot comply with a timeframe imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

#### ARTICLE 16.24

##### ***Expenses***

Unless the parties to the dispute agree otherwise, the expenses of the panel, including the remuneration of its arbitrators, shall be borne by the parties to the dispute in equal shares.

#### ARTICLE 16.25

##### ***Rules of Procedure and Code of Conduct***

The panel proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure of a Panel and any Code of Conduct for Arbitrators, to be adopted by the Joint Committee at its first meeting.

## **CHAPTER 17**

### **FINAL PROVISIONS**

#### ARTICLE 17.1

##### *Annexes and Appendices*

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

#### ARTICLE 17.2

##### *Amendments*

1. The Parties may agree, in writing, to amend this Agreement.
2. Unless otherwise agreed, amendments shall enter into force on the first day of the third month following the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary certifying that they have completed their respective internal requirements and procedures.
3. In relation to an EEA EFTA State notifying the Depositary certifying that they have completed their respective internal requirements and procedures after the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary, the amendment shall enter into force on the first day of the third month following the notification of its completion of their internal requirements and procedures.
4. Notwithstanding paragraphs 1 to 3, the Joint Committee may decide to amend the Annexes and Appendices to this Agreement. The decision shall enter into force on the first day of the third month following the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary certifying that they have completed their respective internal requirements and procedures, unless otherwise specified in the decision. In relation to an EEA EFTA State notifying the Depositary of such completion after the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary, the decision shall enter into force on the first day of the third month following its notification.
5. Amendments regarding issues related only to one or several EEA EFTA States and the United Kingdom shall be agreed upon by the Parties concerned.

6. The text of the amendments and the notices of completion of internal requirements and procedures shall be deposited with the Depositary.
7. Any Party may agree to apply an amendment provisionally, subject to its internal requirements for provisional application. Provisional application of amendments shall be notified to the Depositary. Such provisional application shall take effect between the United Kingdom and an EEA EFTA State on the date on which they have both deposited their respective notifications with the Depositary.
8. Any Party may terminate the provisional application of an amendment of this Agreement by means of a written notification to the Depositary. Such termination shall take effect:
  - (a) between the United Kingdom and an EEA EFTA State on the first day of the second month following the date of such notification by an EEA EFTA State; or
  - (b) between all Parties who have provisionally applied the amendment on the first day of the second month following such notification by the United Kingdom.

#### ARTICLE 17.3

##### ***Withdrawal and Expiration***

1. Each Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect 12 months after the date on which the notification is received by the Depositary unless the Parties agree otherwise.
2. If the United Kingdom withdraws, this Agreement shall expire when its withdrawal becomes effective.

#### ARTICLE 17.4

##### ***Review***

1. The Parties shall undertake a general review of the implementation and operation of this Agreement in the 10th year following the date of entry into force of this Agreement, or at such times as may be agreed by the Parties.
2. This Article shall be without prejudice to any other review provision in this Agreement.

## ARTICLE 17.5

### *Entry into Force*

1. This Agreement shall enter into force, in relation to those Parties which by then have notified the Depositary certifying that they have completed their respective internal requirements and procedures, and provided that at least one EEA EFTA State and the United Kingdom are among the States that have notified the Depositary certifying that they have completed their respective internal requirements and procedures, on the first day of the month following the date the Parties have notified the Depositary their written notifications.
2. In relation to an EEA EFTA State notifying the Depositary certifying that they have completed their respective internal requirements and procedures for entry into force of this Agreement after the date on which at least one EEA EFTA State and the United Kingdom have notified the Depositary, this Agreement shall enter into force in relation to such EEA EFTA State on the first day of the month following the date the Depositary received its notification.
3. Any Party may agree to the provisional application of this Agreement, subject to its internal requirements and procedures for provisional application. Provisional application of this Agreement shall be notified to the Depositary. Such provisional application shall take effect as between the United Kingdom and an EEA EFTA State on the date on which they have both deposited their respective notifications with the Depositary.
4. Any Party may terminate its provisional application of this Agreement by means of a written notification to the Depositary. Such termination shall take effect:
  - (a) as between the United Kingdom and an EEA EFTA State on the first day of the second month following the date of such notification by an EEA EFTA State; or
  - (b) as between all Parties who have provisionally applied the Agreement on the first day of the second month following such notification by the United Kingdom.



ARTICLE 17.6

***Depository***

The Government of Norway shall act as Depository.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at London, this 8<sup>th</sup> day of July 2021, in one original in English, which shall be deposited with the Depositary, who shall transmit certified copies to all the Parties.

**For Iceland:**

**For the United Kingdom of  
Great Britain and Northern  
Ireland:**

**GUÐLAUGUR THÓR THÓRDARSON**

**RANIL JAYAWARDENA**

**For the Principality of Liechtenstein:**

**DOMINIQUE HASLER**

**For the Kingdom of Norway:**

**ISELIN NYBØ**



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978-1-5286-5920-8