PROTOCOL TO FURTHER UPGRADE THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION AND CERTAIN AGREEMENTS THEREUNDER BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA (ACFTA 3.0 UPGRADE PROTOCOL)

The Governments of Brunei Darussalam ("Brunei Darussalam"), the Kingdom of Cambodia ("Cambodia"), the Republic of Indonesia ("Indonesia"), the Lao People's Democratic Republic ("Lao PDR"), Malaysia, the Republic of the Union of Myanmar ("Myanmar"), the Republic of the Philippines ("Philippines"), the Republic of Singapore ("Singapore"), the Kingdom of Thailand ("Thailand"), and the Socialist Republic of Viet Nam ("Viet Nam"), Member States of the Association of South East Asian Nations (hereinafter referred to collectively as "the ASEAN Member States", or individually as "ASEAN Member State"), and the People's Republic of China ("China"), hereinafter referred to collectively as "Parties" or individually as "Party":

RECALLING the *Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China* done at Phnom Penh, Cambodia on 4 November 2002 which entered into force on 1 July 2003, as amended by the *Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China* done in Bali, Indonesia on 6 October 2003, the *Second Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Cebu, the Philippines on 8 December 2006, the *Third Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Phnom Penh, Cambodia, on 19 November 2012, and the *Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation and Certain Agreements thereunder between the Association of Southeast Asian Nations (ASEAN) and the People's Republic of China* done in Kuala Lumpur, Malaysia, on 21 November 2015 ("Framework Agreement");

RECALLING the *Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done at Vientiane, Lao PDR on 29 November 2004 which entered into force on 1 January 2005, as amended by the *Protocol to Amend the*

Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China done in Cebu, the Philippines on 8 December 2006, the *Second Protocol to Amend the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Ha Noi, Viet Nam on 29 October 2010 and Kuala Lumpur, Malaysia on 2 November 2010, and the *Protocol to Incorporate Technical Barriers to Trade and Sanitary and Phytosanitary Measures into the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Phnom Penh, Cambodia on 19 November 2012 ("Agreement on Trade in Goods");

RECALLING the *Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Vientiane, Lao PDR on 29 November 2004 which entered into force on 1 January 2005 ("Agreement on Dispute Settlement Mechanism");

RECALLING the *Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Cebu, the Philippines on 14 January 2007 which entered into force on 1 July 2007, as amended by the *Protocol to Implement the Second Package of Specific Commitments under the Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Bali, Indonesia on 16 November 2011 ("Agreement on Trade in Services");

RECALLING the *Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China* done in Bangkok, Thailand on 15 August 2009 which entered into force on 15 January 2010 ("Agreement on Investment");

EMPHASISING the importance of further enhancing the ASEAN-China Free Trade Area, focusing on trade opportunities in digital economy and green economy, promotion of investment, tourism flows, e-commerce, consumer protection, development of micro, small, and medium enterprises, local entrepreneurs, start-ups and financial technology cooperation in the region;

DESIRING to upgrade the ASEAN-China Free Trade Area in areas of mutual interest, to enhance user-friendliness by transitioning the Framework Agreement, the Agreement on Trade in Goods, the Agreement on Dispute Settlement Mechanism, the Agreement on Trade in Services, and the Agreement on Investment to a modern chapter-based structure, and to further the Parties' existing commitments and help ensure that the ASEAN-China Free Trade Area remains relevant to businesses, future-ready, and responsive to global challenges; and

NOTING that the Agreement on Trade in Goods was partially amended, and the Agreement on Trade in Services, Agreement on Investment, and the Agreement on Dispute Settlement Mechanism were not amended at the 3.0 Upgrade negotiations,

HAVE AGREED AS FOLLOWS:

Article 1
Amendment to the Framework Agreement and Agreement on Trade in Goods

1. In accordance with Article 14 (Amendments) of the Framework Agreement, the Parties have agreed to amend the Framework Agreement by incorporating the Appendix to this Protocol as Annex 6 (Chapter-Based Text Consolidated from the Framework Agreement and Agreements Thereunder) of the Framework Agreement. This Appendix consolidates as a chapter-based text the following:

   (a) the amendments agreed by the Parties in accordance with Article 19 (Amendments) of the Agreement on Trade in Goods and Article 14 (Amendments) of the Framework Agreement;

   (b) the new commitments agreed by the Parties; and

   (c) the reaffirmation by the Parties of the unamended parts of the Agreement on Trade in Goods, as well as the Agreement on Trade in Services, the Agreement on Investment, and the Agreement on Dispute Settlement Mechanism.

2. This Protocol shall form an integral part of the Framework Agreement.

Article 2
Amendment to the Framework Agreement

The Framework Agreement shall be amended by inserting the following Article 17 (General Review):

"Article 17
General Review

The Parties shall undertake a general review of this Agreement with a view to updating and enhancing this Agreement to ensure that this Agreement remains relevant to the trade and investment issues and challenges confronting the Parties, five years after the date of entry into force of the ACFTA 3.0 Upgrade Protocol, and every five years thereafter, unless the Parties agree otherwise."

Article 3
Reaffirmed Agreements

Chapter 1 (Trade in Goods), Chapter 2 (Rules of Origin), Chapter 6 (Trade in Services), Chapter 7 (Investment), and Chapter 14 (Dispute Settlement) of the Appendix merely reaffirm the unamended parts of the Agreement on Trade in Goods, as well as the Agreement on Trade in Services, the Agreement on Investment, and the Agreement on Dispute Settlement Mechanism respectively, which are not amended by this Protocol.

Article 4
Work Programme

The Parties shall enter into discussions two years after the entry into force of this Protocol for all Parties, unless the Parties agree otherwise, with a view to developing a consolidated chapter-based text that brings together into one document the provisions of the Framework Agreement and the agreements thereunder.

Article 5
Depositary

For the ASEAN Member States, this Protocol shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each ASEAN Member State.

Article 6
Entry into Force

1. Each Party shall notify the Secretary-General of ASEAN of the completion of its internal procedures[1] necessary for entry into force of this Protocol in writing. This Protocol shall enter into force 60 days after the date by which China and at least five ASEAN Member States have notified the Secretary-General of ASEAN of the completion of their internal procedures in writing.

2. After the entry into force of this Protocol pursuant to paragraph 1, this Protocol shall enter into force for any remaining Party 60 days after the date of its notification to the Secretary-General of ASEAN of the completion of its internal procedures in writing.

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

DONE at , , this
of in the Year , in duplicate original copies
in the English Language.

[1] For clarity, the term "internal procedures" may include ratification, acceptance or approval by the Parties in accordance with their respective domestic laws and regulations.

For the Government of Brunei Darussalam:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Kingdom of Cambodia:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Republic of Indonesia:

(**NAME IN BOLD AND CAPS**)
(Designation)

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

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of Malaysia:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Republic of the Union of Myanmar:

(NAME IN BOLD AND CAPS)
(Designation)

For the Government of the Republic of the Philippines:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Republic of Singapore:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Kingdom of Thailand:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the Socialist Republic of Viet Nam:

(**NAME IN BOLD AND CAPS**)
(Designation)

For the Government of the People's Republic of China:

(**NAME IN BOLD AND CAPS**)
(Designation)

APPENDIX

CHAPTER 1

TRADE IN GOODS

Article 1.1: Reaffirmation

The Parties reaffirm the unamended parts of the Agreement on Trade in Goods.

CHAPTER 2

RULES OF ORIGIN

Article 2.1: Reaffirmation

The Parties reaffirm their commitments under Annex 3 (Rules of Origin) of the Agreement on Trade in Goods.

CHAPTER 3

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 3.1: Consolidation with Amendments

The Agreement on Trade in Goods which entered into force on 1 January 2005 continues to remain in force with amendments as consolidated in this Chapter.

Article 3.2: Definitions

For the purposes of this Chapter:

(a) **customs authority** means any authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;

(b) **customs laws and regulations** means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to a customs authority, and any regulations made by a customs authority, under its statutory powers;

(c) **customs procedures** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to customs laws and regulations;

(d) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994* contained in Annex 1A to the WTO Agreement;

(e) **express consignment** means all goods imported by or through an enterprise that operates a consignment service for the expeditious cross-border movement of goods and assumes liability to the customs authority for those goods;

(f) **Harmonized System** or **HS** means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes, and Subheading Notes, as adopted and

administered by the World Customs Organization, set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as may be amended, adopted and implemented by the Parties in their respective laws;

(g) **means of transport** means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods or articles.

(h) **perishable goods** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions; and

(i) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

Article 3.3: Objectives

The objectives of this Chapter are to:

(a) ensure predictability, consistency, and transparency in the application of customs laws and regulations of each Party;

(b) promote efficient administration of customs procedures of each Party, and the expeditious clearance of goods;

(c) simplify customs procedures of each Party and harmonise them to the extent possible with relevant international standards;

(d) promote cooperation among the customs authorities of the Parties; and

(e) facilitate trade among the Parties, including through a strengthened environment for global and regional supply chains.

Article 3.4: Scope

This Chapter applies, in accordance with the Parties' respective laws and regulations, to customs procedures applied to goods traded among the Parties and to the means of transport which enter or leave the customs territory of each Party.

Article 3.5: Customs Procedures

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and trade facilitating, including through the expeditious clearance of goods.

2. Each Party shall ensure its customs procedures, where possible and to the extent permitted by their respective customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization and the trade facilitation measures of the World Trade Organization.

3. The customs authority of each Party shall review its customs procedures to facilitate trade.

4. Customs control shall be limited to that which is necessary to ensure compliance with customs laws and regulations of the respective Parties.

Article 3.6: Consistency

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory. For greater certainty, this does not prevent the exercise of discretion granted to the customs authority of a Party where such discretion is granted by that Party's customs laws and regulations, provided that the discretion is exercised consistently throughout that Party's customs territory and in accordance with its customs laws and regulations.

2. In fulfilling the obligation in paragraph 1, each Party shall endeavour to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.

3. Each Party is encouraged to share with the other Parties its practices and experiences relating to the administrative mechanism referred to in paragraph 2 with a view to improving the operations thereof.

4. If a Party fails to comply with the obligations in paragraphs 1 and 2, another Party may consult with that Party on the matter in accordance with the consultation procedures under Article 3.24 (Customs Cooperation).

Article 3.7: Publication and Enquiry Points

1. Each Party shall promptly publish, on the internet to the extent possible, the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested persons to become acquainted with them:

   (a) procedures for importation, exportation, and transit (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) laws, regulations, and administrative rulings of general application relating to rules of origin;

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

   (g) penalty provisions for breaches of import, export, or transit formalities;

   (h) procedures for appeal or review;

   (i) agreements to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit; and

(j) procedures relating to the administration of tariff quotas.

2. In particular, each Party shall make available, and update to the extent possible and as appropriate, the following through the internet:

(a) a description[1] of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested persons of the practical steps needed for importation, exportation, and transit;

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

(c) contact information for the enquiry points as well as information on how to make enquiries on customs matters as provided for in paragraph 6.

3. To the extent possible, when developing new or amending existing customs laws and regulations, each Party shall publish or otherwise make readily available such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is precluded.

4. Each Party shall, to the extent practicable and in a manner consistent with its laws and regulations and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them is otherwise made publicly available, as early as possible before the date of their entry into force, in order to enable traders and other interested persons to become acquainted with them.

5. Nothing in this Article shall be construed as requiring the publication or provision of information other than in the language of the Party.

6. Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons concerning customs

[1] Each Party has the discretion to state on its website the legal limitations of this description.

matters and to facilitate access to forms and documents required for importation, exportation, and transit.

Article 3.8: Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

   (a) be contrary to the public interest as determined by its laws and regulations;

   (b) be contrary to any of its laws and regulations, including those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

   (c) impede law enforcement; or

   (d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.

2. Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

Article 3.9: Consultations

1. The customs authority of a Party may at any time request consultations with another Party regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultations shall be conducted through the respective contact points designated pursuant to paragraph 3 and shall commence within 30 days following the date of the receipt of the request, unless the relevant Parties determine otherwise.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the committee that oversees this Chapter.

3. Each Party shall, within 30 days of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party, designate one or more contact points for the purposes of this Chapter and notify the other Parties of the contact details and other relevant information, if any. Each Party shall promptly notify the other Parties of any change to those contact details.

Article 3.10: Risk Management

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

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

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

4. Each Party shall base risk management on the assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Article 3.11: Pre-shipment Inspection

1. Each Party shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

2. Without prejudice to the rights of any Party to use other types of pre-shipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.

3. Paragraph 2 refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for sanitary and phytosanitary purposes.

Article 3.12: Customs Valuation

1. For the purposes of determining the customs value of goods traded among the Parties, Article VII of GATT 1994, and Part I (Rules on Customs Valuation) and the Interpretative Notes of Annex I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

2. The customs authority may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8 of the Customs Valuation Agreement, where the customs authority has reason to doubt the truth or accuracy of the particulars or of documents produced in support of a presented declaration.

Article 3.13: Tariff Classification

The Parties shall apply the International Convention on the Harmonized Commodity Description and Coding System to goods traded among them, and shall, to the extent practicable, adopt the latest version of HS Code.

Article 3.14: Advance Rulings

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:

   (a) tariff classification;

   (b) whether the good is an originating good in accordance with Annex 3 (Rules of Origin) of the Agreement on Trade in Goods, as reaffirmed in Chapter 2 (Rules of Origin);

(c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement; and

(d) such other matters as the Parties may agree.

2. A Party may require that an applicant have legal representation or registration in that Party. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of micro, small, and medium enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.[2, 3]

3. Each Party shall adopt or maintain procedures for issuing advance rulings which:

(a) specify the information required to apply for an advance ruling;

(b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information, which may include a sample of the goods, necessary to evaluate the application;

(c) ensure that an advance ruling be based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and

(d) ensure that the advance ruling includes the relevant facts and the basis for its decision.

4. Each Party shall issue an advance ruling in the official language of the issuing Party or in the language it decides. The advance ruling shall be issued in a reasonable, specified, and time-bound

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[2] On request of a Party, the Parties may review the requirements of this paragraph in terms of their contribution towards the trade facilitation through the establishment of the Committee on Customs Procedures and Trade Facilitation as referred to in Article 3.25 (Committee on Customs Procedures and Trade Facilitation).

[3] Each Party shall ensure that its registration process is transparent, applications are considered in a timely manner, and the decision made on an application, and the reasons for it, are promptly advised to the applicant in writing.

manner, and to the extent possible within 90 days, to the applicant on the receipt of all necessary information. Each Party shall specify and make public such time period for the issuance of an advance ruling prior to such an application. Should the customs authority have reasonable grounds to issue the advance ruling later than the specified period after the receipt of the application, it shall notify the applicant of the grounds for such a delay prior to the end of the specified period.

5. 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. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.

6. A Party may reject a request for an advance ruling where the additional information requested, in writing, in accordance with subparagraph 3(b) is not provided within a reasonable, specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.

7. Each Party shall provide that an advance ruling shall be valid from the date it is issued, or another date specified in the ruling, provided that the laws, regulations, and administrative rules, and facts and circumstances, on which the ruling is based remain unchanged. Subject to paragraph 8, an advance ruling shall remain valid for at least three years.

8. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide written notice to the applicant setting out the relevant facts and the basis for its decision, where:

   (a) there is a change in its laws, regulations, or administrative rules;

   (b) incorrect information was provided or relevant information was withheld;

   (c) there is a change in a material fact or circumstances on which the advance ruling was based; or

   (d) the advance ruling was in error.

9. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

11. Each Party shall publish, at a minimum:

    (a) the requirements for an 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 an advance ruling is valid.

12. Each Party may 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 3.15: Pre-arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of documents or any information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

2. Each Party shall provide, as appropriate, for advance lodging of documents or any information referred to in paragraph 1 in electronic format for pre-arrival processing of such documents.

Article 3.16: Application of Information Technology

1. Each Party shall, to the extent possible, apply information technology to support customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.

2. Each Party shall, to the extent possible, use information technology that expedites customs procedures for the release of goods, including the submission of data before the arrival of the

shipment of those goods as well as electronic or automated systems for risk management targeting.

3. Each Party shall endeavour to make its trade administration documents available to the public in electronic versions.

4. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.

5. In developing initiatives that provide for the use of paperless trade administration, each Party is encouraged to take into account international standards or methods made under the auspices of international organisations.

6. Each Party shall cooperate with other Parties and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 3.17: Single Window

1. Each Party shall endeavour to establish or maintain a single window, enabling traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

Article 3.18: Express Consignments

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those

goods entered through air cargo facilities while maintaining appropriate customs control and selection,[4] by:

(a) providing for pre-arrival processing of information related to express consignments;

(b) permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;

(c) minimising the documentation required for the release of express consignments;

(d) providing for express consignment to be released under normal circumstances as rapidly as possible, and within six hours when possible, after the arrival of the goods and submission of the information required and all requirements have been met for release;

(e) endeavouring to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided that the treatment is not limited to low value goods such as documents; and

(f) providing, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994, shall not be subject to this provision.

2. Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

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[4] In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedures.

Article 3.19: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade among the Parties. For greater certainty, this paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that allow goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs laws and regulations and, to the extent possible, within 48 hours of the arrival of goods and lodgement of all the necessary information for customs clearance.

3. If any goods are selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.

4. Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees and charge if such determination is not done prior to, or upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees and charges, ultimately due for the goods covered by the guarantee.

5. Nothing in this Article shall affect the right of a Party to examine, detain, seize or confiscate or deal with the goods in any manner consistent with its laws and regulations.

6. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods from customs control:

   (a) under normal circumstances in the shortest possible time, and to the extent possible in less than six hours after the arrival of the goods and submission of the information required for release; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.

7. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

8. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each 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. Each Party shall, where practicable and consistent with domestic legislation, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 3.20: Repayment, Drawback and Security

1. Decisions on claims for repayment shall be reached and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of such claims.

2. Drawback shall be paid as soon as possible after the verification of such claims.

3. Where security has been furnished, it shall be discharged as soon as possible after the customs administration is satisfied that the obligations under which the security was required, have been duly fulfilled.

Article 3.21: Post Clearance Audit

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

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-

clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record was audited of the:

(a) results;

(b) reasons for the results; and

(c) person's rights and obligations.

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

4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 3.22: Trade Facilitation Measures for Authorised Operator

1. Each Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3, to operators who meet specified criteria, (hereinafter referred to as "authorised operators" in this Chapter). Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party's laws, regulations, or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

3. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures:[5]

(a) low documentary and data requirements, as appropriate;

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

(c) rapid release time, as appropriate;

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

(e) use of comprehensive guarantees or reduced guarantees;

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

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

4. Each Party is encouraged to develop authorised operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5. In order to enhance the trade facilitation measures provided to operators, each Party shall afford to other Parties the possibility of negotiating mutual recognition of authorised operator schemes.

6. The Parties are encouraged to cooperate, where appropriate, in developing their respective authorised operator schemes using the contact points designated pursuant to Article 3.9

[5] Measures listed in subparagraphs (a) through (g) will be deemed to be provided to authorised operators if it is generally available to all operators.

(Consultations) and the committee that oversees this Chapter through the following:

(a) exchanging information on such schemes and on initiatives to introduce new schemes;

(b) sharing perspectives on business views and experiences, and best practices in business outreach;

(c) sharing information on approaches to mutual recognition of such schemes; and

(d) considering ways to enhance the benefits of such schemes to promote trade, and, in the first instance, to designate customs officers as coordinators for authorised operators to resolve customs issues.

Article 3.23: Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision[6] has the right, within its territory, 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.[7]

2. The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

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[6] For the purposes of this Article, administrative decision means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph (a).

[7] Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

4. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

   (a) within set periods as specified in its laws or regulations; or

   (b) without undue delay,

   the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.[8]

5. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.

6. Each Party shall ensure that the person referred to in paragraph 1 is not treated unfavourably merely because that person seeks review of an administrative decision or omission referred to in paragraph 1.

7. Each Party is encouraged to make this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.

8. The decision, and the reasons for the decision, of an administrative or judicial review or appeal shall be provided in writing.

Article 3.24: Customs Cooperation

1. The customs authority of each Party may, as deemed appropriate, assist the customs authorities of other Parties, in relation to:

   (a) the implementation and operation of this Chapter;

   (b) developing and implementing customs best practice and risk management techniques;

   (c) simplifying and harmonising customs procedures;

[8] Nothing in this paragraph shall prevent a Party from recognising administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

(d) advancing technical skills and the use of technology;

(e) application of the Customs Valuation Agreement; and

(f) such other customs issues as the Parties may mutually determine.

2. The customs authority of a Party may, as deemed appropriate, share with other Parties, information and experiences on development of customs administration, including programmes to enhance the capability of customs officials of the Parties and programmes to facilitate the Parties' development on customs reform and modernisation.

3. Each Party shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Parties with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade.

4. Recognising the importance of employing technology and innovative solutions in customs' response to global challenges, the customs authorities of the Parties may enhance cooperation to promote customs digitalisation and modernisation including, World Customs Organization's initiative on smart customs and to explore new opportunities of trade facilitation brought about by disruptive technology.

Article 3.25: Committee on Customs Procedures and Trade Facilitation

1. The Parties shall establish a Committee on Customs Procedures and Trade Facilitation ("CPTF Committee"), when necessary, to ensure effective implementation and operation of this Chapter.

2. The CPTF Committee will be established at the request of one or more Parties, subject to the endorsement of the ACFTA-JC.

3. The functions of the CPTF Committee shall be determined at the point of its establishment, and the CPTF Committee will carry out the tasks assigned by the ACFTA-JC.

Article 3.26: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Agreement or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.

CHAPTER 4

STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES

Article 4.1: Consolidation with Amendments

The Agreement on Trade in Goods which entered into force on 1 January 2005 continues to remain in force with amendments as consolidated in this Chapter.

Article 4.2: Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 to the TBT Agreement shall apply.

Article 4.3: Objectives

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

(a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) enhancing the implementation of the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement ("TBT Agreement");

(c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;

(d) strengthening information exchange and cooperation among the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies;

(e) addressing the issues that may arise under this Chapter; and

(f) providing a framework for the implementation of this Chapter.

Article 4.4: Scope

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of each Party that may, directly or indirectly, affect trade in goods among the Parties. It shall exclude:

   (a) sanitary and phytosanitary measures which are covered in Chapter 5 (Sanitary and Phytosanitary Measures); and

   (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.

3. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

Article 4.5: Affirmation and Incorporation of the TBT Agreement

1. The following provisions of the TBT Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*:

   (a) Article 2, except paragraphs 4, 7, 8, and 12;

   (b) paragraph 2 of Article 4;

   (c) Article 5, except paragraph 4;

   (d) paragraph 1 of Article 9; and

   (e) Annex 3, except paragraph A.

   The Parties also affirm their other rights and obligations under the TBT Agreement with respect to each of the other Parties.

2. In the event of any inconsistency between any provision of the TBT Agreement incorporated under paragraph 1 and other provisions of this Chapter, the latter shall prevail.

Article 4.6: Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies that prepare, adopt, and apply national standards accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage its standardising body or bodies to cooperate with the standardising body or bodies of other Parties. Such cooperation shall include:

   (a) exchange of information on standards;

   (b) exchange of information relating to standard setting procedures; and

   (c) international standardising activities in areas of mutual interest.

3. Where modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall, on request of another Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.

4. Further to paragraph 3, each Party shall ensure that its standardising body or bodies ensure that the modifications of the contents and structure of international standards are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

Article 4.7: Technical Regulations

1. Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international

standards, or their relevant parts, as a basis for its technical regulations, it shall, on request of another Party, explain the reasons therefor.

2. In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.

3. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

4. Where a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons for its decision.

5. When a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall, on request of another Party, provide its reason therefor.

6. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in exporting Parties to adapt their products or methods of production to the requirements of importing Parties. For the purposes of this paragraph, "reasonable interval" shall be understood to mean normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation.

7. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of another Party, the requested Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.

8. Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its whole territory. For greater certainty, nothing in this paragraph shall be construed to prevent local

government bodies from preparing, adopting, and applying additional technical regulations in a manner consistent with the provisions of the TBT Agreement.

Article 4.8: International Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in the harmonisation of technical regulations, conformity assessment procedures, and national standards, and in reducing unnecessary barriers to trade.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party takes into account the principles set out in the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement* (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade ("WTO TBT Committee"). Such international standards may include those developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and the Codex Alimentarius Commission (CAC).

3. The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on international standards and related issues in other international fora, such as the WTO TBT Committee.

Article 4.9: Conformity Assessment Procedures

1. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency, avoiding duplication, and ensuring cost-effectiveness of the conformity assessments.

2. Each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as

duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

3. The Parties agree to encourage cooperation between their relevant conformity assessment bodies, and may encourage cooperation between their relevant competent authorities of conformity assessment [1] in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in another Party are accepted, even when those procedures differ from its own, unless those procedures do not offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

4. A Party shall, upon request of another Party, provide its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

5. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party. Such mechanisms may include:

   (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties concerned;

   (b) voluntary cooperative arrangements, such as joint development of conformity assessment procedures in areas of mutual interest, between relevant ASEAN committees including its working groups, and China's Competent Authorities of Standards and Conformity Assessment;

   (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements

[1] "Competent authorities of conformity assessment" refers to the national competent authorities of China and ASEAN Member States, where applicable.

or arrangements, to recognise the accreditation granted by another Party;

(d) the designation of conformity assessment bodies in another Party;

(e) unilateral recognition by a Party of results of conformity assessment procedures conducted in another Party; and

(f) the manufacturer's or the supplier's declaration of conformity.

6. Upon reasonable request, the Parties concerned shall exchange information or share experiences on the mechanisms referred to in paragraph 5, including their development and application, with a view to facilitating the acceptance of results of conformity assessment procedures, or promoting the recognition of conformity assessment procedures in a manner consistent with the provisions of the TBT Agreement and the laws and regulations of the Parties concerned. Consideration should be given to applying information technology to enhance the transparency of information on conformity assessment procedures, policies and developments of the Parties, and to facilitate information access of stakeholders.

7. The Parties recognise the important role that relevant regional and international organisations can play in cooperation in the area of conformity assessment, and agree to promote the acceptance of the results of conformity assessment procedures among members under the relevant regional or international organisations. In this regard, when cooperating in conformity assessment, the Parties shall take into consideration their participation in the applicable regional or international organisations such as IEC, ITU, International Accreditation Forum (IAF), International Laboratory Accreditation Cooperation (ILAC), Asia-Pacific Accreditation Cooperation (APAC), the International Bureau of Weights and Measures (BIPM), the International Organisation of Legal Metrology (OIML) and other relevant regional or international organisations.

8. A Party shall give positive consideration to a request by another Party to enter into negotiations for a mutual recognition agreement.

9. The Parties shall explore and upon agreement, develop and implement Mutual Recognition Agreement in areas of mutual interest.

10. Each Party shall explain, on the request of the other Party, the reasons for its decision not to enter into negotiations for a mutual recognition agreement.

11. Each Party shall, whenever possible, permit the participation of conformity assessment bodies in another Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in the Party.

12. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in another Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

Article 4.10: Transparency

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.13), as may be revised.

2. Each Party affirms its commitment to ensuring that information regarding proposed new or amended technical regulations, standards and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

3. Each Party shall make available the full text of its notified technical regulations and conformity assessment procedures to a requesting Party within 15 working days after receiving a written request. If the full text is unavailable, the Party shall provide to the requesting Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties concerned and, if possible, within 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the requested Party.

4. Each Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Party has adopted or is proposing to adopt.

5. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Parties to provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. Each Party shall take the comments of the other Parties into account and shall endeavour to provide responses to those comments upon request.

6. Each Party shall allow persons of another Party to participate in consultation procedures that are open to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons.

7. When a Party detains an imported consignment at the point of entry due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.

8. Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed by the Parties concerned and, if possible, within 60 days. Upon request, the requested Party shall provide such information or explanation in the language or languages agreed by the Parties concerned or, whenever possible, in the English language.

Article 4.11: Technical Consultations

1. When a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may request technical consultations. The requested Party shall respond as early as possible to such request.

2. The requested Party shall enter into technical consultations within 60 days after receiving the request. With a view to reaching a

mutually satisfactory solution. Technical consultations may be conducted via any means agreed by the Parties concerned. If a requesting Party considers that the matter is urgent, it may request that any technical discussion take place within 30 days. The responding Party shall give positive consideration to that request.

3. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the relevant Parties should establish an *ad hoc* working group, endorsed by the Committee on Standards, Technical Regulations, and Conformity Assessment Procedures ("STRACAP Committee") referred to in Article 4.14 (Committee on Standards, Technical Regulations, and Conformity Assessment Procedures), to identify a workable and practical solution that would facilitate trade.

4. If a Party rejects the request of the other Party for the establishment of an *ad hoc* working group, that Party, upon request of the other Party, shall explain the reason for its rejection.

Article 4.12: Technical Cooperation

1. The Parties shall intensify their joint efforts in the fields of standards, technical regulations, and conformity assessment procedures in the areas of mutual interest, consistent with the objectives of this Chapter.

2. Each Party shall, upon request of another Party, give positive consideration to proposals to strengthen existing cooperation on standards, technical regulations, and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include:

   (a) advice, technical exchange, technical assistance, capacity building or joint study relating to the development and application of standards, technical regulations, and conformity assessment procedures;

   (b) encouraging cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, in the areas of mutual interest;

   (c) use of accreditation to qualify conformity assessment bodies;

(d) enhancing technical capacity in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(e) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by such regional and international bodies;

(f) strengthening communication and coordination in the WTO TBT Committee and other relevant regional or international fora;

(g) enhancing cooperation in the development and improvement, of standards, technical regulations, and conformity assessment procedures. In the absence of international standards, which shall be used as the first priority, or when the available international standards or their relevant parts would be ineffective or inappropriate, a Party may request the other Party to consider using the standard or technical regulation of another Party as reference to harmonise standards based on mutual interest; and

(h) sharing of experience in the implementation of the principle of transparency pursuant to Article 4.10 (Transparency).

3. Each Party shall, on request of another Party, give consideration to sector-specific proposals for mutual benefit for cooperation under this Chapter.

Article 4.13: Contact Points

1. Each Party shall, within 30 days of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party, designate a contact point or contact points.

2. Each Party shall provide the other Parties with the name and contact details of the designated contact point or contact points, including telephone, facsimile, email and any other relevant details. Each Party shall notify the other Parties promptly of any change in the name and contact details of its contact point or contact points.

3. Each Party shall ensure that its contact point or contact points have the responsibility for coordinating the implementation of this Chapter and the facilitation of the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from another Party.

Article 4.14: Committee on Standards, Technical Regulations, and Conformity Assessment Procedures

1. The Parties hereby establish a Committee on Standards, Technical Regulations, and Conformity Assessment Procedures ("STRACAP Committee"), consisting of representatives of the Parties, to monitor the implementation of this Chapter.

2. The STRACAP Committee shall review or revise the existing ACFTA SC STRACAP Work Programme in response to new priorities as identified and agreed by the Parties.

3. The STRACAP Committee may invite experts from international organisations, private sector entities, business communities, or other relevant institutions to participate in relevant activities as needed.

4. The STRACAP Committee may explore participation at platforms such as the China-ASEAN Standardization Cooperation Forum, and other agreed organisations where representatives may share and exchange views about ongoing cooperation under the agreement.

5. The STRACAP Committee shall report to the ASEAN-China Free Trade Area Joint Committee ("ACFTA-JC").

6. The Parties recognise the importance of financial support for STRACAP cooperation. The Parties shall utilise the ASEAN-China Cooperation Fund and voluntary donations from Parties to promote capacity building and cooperation.

Article 4.15: Disclosure of Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice

legitimate commercial interests of particular enterprises, public or private.

Article 4.16: Confidentiality

Unless otherwise provided in this Chapter, where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

Article 4.17: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Chapter or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Consolidation with Amendments

The Agreement on Trade in Goods which entered into force on 1 January 2005 continues to remain in force with amendments as consolidated in this Chapter.

Article 5.2: Definitions

For the purposes of this Chapter:

(a) the definitions provided in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO ("SPS Agreement"), shall apply;

(b) relevant definitions developed by Codex Alimentarius Commission, the World Organisation for Animal Health, and the International Plant Protection Convention shall be taken into account;

(c) **competent authorities** means those authorities within each Party recognised by the national government as responsible for developing and administering the sanitary and phytosanitary measures within that Party;

(d) **days** means calendar days, including weekends and holidays;

(e) **emergency measure** means a sanitary or phytosanitary measure that is applied by an importing Party to a relevant exporting Party to address an urgent problem of human, animal, or plant life or health protection that arises or threatens to arise in the Party applying the measure; and

(f) **person** means a natural person or a juridical person.

Article 5.3: Objectives

The objectives of this Chapter are to:

(a) protect human, animal, or plant life or health in the Parties through the development, adoption, and application of sanitary and phytosanitary measures, while facilitating trade by minimising the negative effects on trade between the Parties;

(b) enhance the practical implementation of the SPS Agreement;

(c) enhance the transparency and understanding of the development and application of sanitary and phytosanitary measures of the Parties;

(d) strengthen cooperation, communication, and consultation between the Parties in the field of sanitary and phytosanitary measures;

(e) facilitate information exchange and technical cooperation between the Parties, and enhance mutual understanding of each Party's regulatory system on sanitary and phytosanitary measures; and

(f) encourage the Parties' participation in the development and adoption of international standards, guidelines, and recommendations.

Article 5.4: Scope

This Chapter shall apply to all sanitary and phytosanitary measures of the Parties, which may, directly or indirectly, affect trade among the Parties.

Article 5.5: General Provisions

1. The Parties commit to apply the principles of the SPS Agreement in the development and application of any sanitary and phytosanitary measure.

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

3. Any information exchange in this Chapter between the Parties is encouraged to be in English.

Article 5.6: Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with Article 4 of the SPS Agreement while taking into account the relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures ("WTO SPS Committee") and international standards, guidelines, and recommendations.

2. An importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if an exporting Party objectively demonstrates to the importing Party that the exporting Party's measure achieves the same level of protection as the importing Party's measure, or that the exporting Party's measure has the same effect in achieving the objective as the importing Party's measure.

3. In determining the equivalence of a sanitary or phytosanitary measure, the importing Party shall take into account available knowledge, information, and experience, as well as the regulatory competence, of the exporting Party.

4. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements on the equivalence of specified sanitary or phytosanitary measures. The recognition of equivalence under such bilateral recognition arrangements may be with respect to a single measure, a group of measures, or on a systems-wide basis. For this purpose, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.

5. As part of the consultation for equivalence recognition, on request of the exporting Party, the importing Party shall explain and provide:

   (a) the rationale and objective of its measures; and

   (b) the specific risks its measures are intended to address.

6. The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall, upon request, and without undue delay, explain the process and plan for making an equivalence determination.

7. The consideration by an exporting Party of a request from an importing Party for recognition of the equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Party of the product or products in question.

8. When an importing Party recognises the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, the importing Party shall notify the decision in writing to the exporting Party and implement the measure within a reasonable period of time. The rationale shall be provided in writing by the importing Party in the event that the decision is negative.

9. The Parties involved in a positive determination of equivalence are encouraged, where mutually agreed, to share information and experiences at the Committee on Sanitary and Phytosanitary Matters ("SPS Committee").

Article 5.7: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. The Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for such recognition.

3. On request of an exporting Party, an importing Party shall, without undue delay, explain its process and plan for making a determination of regional conditions.

4. When an importing Party has received a request for a determination of regional conditions from an exporting Party and has determined that the information provided by the exporting Party is sufficient, it shall initiate the assessment within a reasonable period of time.

5. For such an assessment, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.

7. When an importing Party recognises specific regional conditions of an exporting Party, the importing Party shall notify that decision to the exporting Party in writing and implement the measures within a reasonable period of time.

8. If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions, the importing Party shall provide the exporting Party with the rationale for its decision in writing within a reasonable period of time.

9. The Parties involved in a determination recognising regional conditions are encouraged, where mutually agreed, to report the outcome to the SPS Committee.

Article 5.8: Risk Analysis

1. The Parties recognise that risk analysis is an important tool for ensuring that sanitary or phytosanitary measures have scientific basis. The Parties shall ensure that their sanitary or phytosanitary measures are based on an assessment of the risks to human, animal, or plant life or health as provided in Article 5 of SPS Agreement, taking into account the risk assessment techniques developed by the relevant international organisations.

2. The Parties shall strengthen their cooperation on risk analysis in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

3. When conducting a risk analysis, an importing Party shall:

   (a) ensure that the risk analysis is documented and that it provides the relevant exporting Party or Parties with an opportunity to comment, in a manner to be determined by the importing Party;

(b) consider risk management options that are not more trade restrictive than required[1] to achieve its appropriate level of sanitary or phytosanitary protection; and

(c) select a risk management option that is not more trade restrictive than required to achieve its appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.

4. On request of an exporting Party, an importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

5. Without prejudice to emergency measures, no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of a sanitary or phytosanitary measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

Article 5.9: Audit[2]

1. In undertaking an audit, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party to provide the required assurances and meet the sanitary and phytosanitary measures of the importing Party.[3]

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[1] For the purposes of subparagraphs (b) and (c), a risk management option is not more trade restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

[2] For greater certainty, without affecting the implementation of this Article, nothing in this Article prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

[3] For greater certainty, nothing in this paragraph prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

3. Prior to the commencement of an audit, the importing Party and exporting Party involved shall exchange information on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.

4. The importing Party shall provide the exporting Party with an opportunity to comment on the finding of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing to the exporting Party within a reasonable period of time.

5. A decision or action taken by the importing Party as a result of the audit should be supported by objective evidence or data that can be verified. This objective evidence or data should be provided to the exporting Party on request.

6. The importing Party and exporting Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the entire audit process.

Article 5.10: Certification

1. In applying certification requirements, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. An exporting Party shall ensure that the documents, including certificates, that are required by an importing Party and provided by the competent authorities of the exporting Party, to demonstrate the fulfilment of the sanitary and phytosanitary requirements of the importing Party, are in the English language, unless the importing Party and exporting Party agree otherwise. When the importing Party requires such documents, the importing Party shall endeavour to provide the requirements for such documents in the English language. Upon request, the importing Party shall provide a summary or explanation of such requirements.

3. The Parties recognise that an importing Party may, as appropriate, allow assurances with respect to sanitary or phytosanitary requirements to be provided through means other than certificates, and that different systems may be capable of meeting the same sanitary and phytosanitary objectives.

4. Where certification is required for trade in a good, the importing Party shall ensure that such certification requirements are applied only to the extent necessary to protect human, animal, or plant life or health.

5. An importing Party should communicate to the exporting Party, on request, the rationale and requirements for specific attestations and identifying information that the importing Party requires to be included on a certificate.

6. Without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the competent authorities of the exporting Party that are in compliance with the regulatory requirements of the importing Party.

Article 5.11: Import Checks

1. In applying import checks, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

2. Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations. In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product.

3. If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of non-compliance of that good found during an import check, the importing Party shall notify the importer or its representatives and, if the importing Party considers necessary, the exporting Party of such non-compliance.

4. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties concerned shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

Article 5.12: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal, or plant life or health and that may have an effect on trade, that Party shall immediately notify the relevant exporting Parties in writing through the contact point or contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties.

2. The relevant exporting Parties may request discussions with the Party adopting an emergency measure referred to in paragraph 1. Such discussions shall be held as soon as practicable. Each Party participating in the discussions shall endeavour to provide relevant information, and shall take due account of any information provided through the discussions.

3. If a Party adopts an emergency measure, it shall review that measure within a reasonable period of time or on request of the exporting Party. The importing Party may, if necessary, request relevant information and the exporting Party shall endeavour to provide the relevant information to assist the importing Party in its review of the adopted emergency measure. The importing Party shall provide the result of the review to the exporting Party upon request. If the emergency measure is maintained after the review, the importing Party should review the measure periodically based on the most recent available information, and upon request, shall explain the reason for the continuation of the emergency measure.

Article 5.13: Transparency

1. The Parties recognise the importance of transparency as set out in Annex B of the SPS Agreement.

2. The Parties recognise the importance of the exchange of information on the development, adoption, and application of sanitary and phytosanitary measures that may have significant effects on trade among the Parties.

3. In implementing this Article, the Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

4. Each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 5.16 (Contact Points and Competent Authorities), or already established communication channels of the Parties.

5. Unless urgent problems of health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days for other Parties to provide written comments after it makes a notification pursuant to paragraph 4. A Party shall consider reasonable requests from another Party to extend the comment period.

6. As part of the comment period referred to in paragraph 5, on request of another Party and if appropriate and feasible, the notifying Party shall consider any scientific or trade concerns and the availability of alternatives that the other Party may raise regarding the proposed measure.

7. Upon request, a Party shall, within 30 days of the request, provide the requesting Party with the documents or a summary of the documents describing the requirements of draft sanitary or phytosanitary measures notified to the WTO pursuant to paragraph 4, in the English language.

8. Following the notification of sanitary or phytosanitary measures to the WTO, upon request, a Party shall provide the requesting Party with the documents or a summary of the documents describing the requirements of the adopted sanitary or phytosanitary measures, within a reasonable period of time as agreed by the relevant Parties, in the English language.

9. A Party, on reasonable request of another Party, shall provide relevant information and clarification regarding any sanitary or phytosanitary measure to the requesting Party, within a reasonable period of time, including:

   (a) the sanitary or phytosanitary requirements that apply to the import of specific products;

   (b) the status of the requesting Party's application; and

   (c) procedures for authorising the import of specific products.

10. An exporting Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is a significant change in animal or plant health status or food safety issues in that exporting Party that may affect trade.

11. An importing Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is:

    (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party; or

    (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party considered necessary to protect human, animal, or plant life or health within the importing Party.

12. An exporting Party shall, to the extent possible and as promptly as possible, provide information to the importing Party if the exporting Party identifies that an export consignment that may be associated with a significant sanitary or phytosanitary risk has been exported.

13. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official website or official journal.

Article 5.14: Cooperation and Capacity Building

1. The Parties shall explore opportunities for further cooperation among the Parties, including e-SPS certificates, capacity building, technical assistance, collaboration, and information exchange, on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter, subject to the availability of appropriate resources.

2. Any two or more Parties may cooperate on any matter, including sector specific proposals, of mutual interest under this Chapter.

3. In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional, or multilateral work programmes, with the objective of avoiding unnecessary duplication and maximising the use of resources.

4. The Parties are encouraged to share, where mutually agreed, information and the experiences of their cooperation activities with other Parties at the SPS Committee.

Article 5.15: Technical Consultation

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with another Party, it may, through the contact points designated under Article 5.16 (Contact Points and Competent Authorities) or already established communication channels, request a detailed explanation of the sanitary or phytosanitary measure. The other Party shall respond promptly to any request for such explanation.

2. A Party may request to hold technical consultations with another Party in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The requested Party shall respond promptly to any reasonable request for such consultation. The consulting Parties shall make every effort to reach a mutually satisfactory resolution.

3. Where a Party requests technical consultations, these shall take place within 30 days of the receipt of the request, unless the consulting Parties agree otherwise. Such consultation should aim to resolve the matter within 180 days of the date of the request, or a time frame agreed by the consulting Parties.

4. The consulting Parties shall encourage relevant authorities to appropriately involve in such meetings held pursuant to this Article, to ensure the consultations to be conducted in a more effective way.

5. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the consulting Parties.

Article 5.16: Contact Points and Competent Authorities

1. Each Party shall, within 30 days of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party:

   (a) designate one or more contact points to facilitate communication on matters covered under this Chapter;

   (b) notify the other Parties of the contact details of that contact point or those contact points; and

   (c) when more than one contact point is designated, specify a contact point that serves as the focal point to respond to enquiries from another Party on the appropriate contact point with which to communicate.

2. Each Party shall provide the other Parties, through the contact points, a description of its competent authorities and the division of their functions and responsibilities.

3. Each Party shall notify the other Parties of any change to the contact points and significant changes in the structure, organisation, and division of responsibility within its competent authorities. Each Party shall keep this information up to date.

4. The Parties recognise the importance of the competent authorities in the implementation of this Chapter. Accordingly, the competent authorities of the Parties may cooperate with each other on matters covered by this Chapter in a manner to be agreed. The Parties are encouraged to share information and experiences of such cooperation of their competent authorities with the SPS Committee where the Parties agree to do so.

Article 5.17: Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Matters ("SPS Committee"), composed of representatives from relevant government authorities of the Parties responsible for sanitary and phytosanitary measures.

2. The functions of the SPS Committee are:

   (a) monitoring the implementation of this Chapter;

(b) enhancing each Party's implementation of this Chapter;

(c) considering sanitary and phytosanitary matters of mutual interest;

(d) enhancing communication and cooperation on sanitary and phytosanitary matters;

(e) facilitating technical consultations upon request by the relevant Parties;

(f) consulting on issues of mutual interest prior to meetings of relevant international organisation, if appropriate; and

(g) carrying out other functions as agreed by the Parties.

3. The SPS Committee shall be co-chaired by an ASEAN representative appointed by ASEAN Member States and a representative of China and meet once a year, unless the Parties agree otherwise. The SPS Committee may conduct the meeting in person, or through any other means agreed by the SPS Committee.

4. The SPS Committee may establish *ad hoc* working groups to accomplish specific tasks.

Article 5.18: Disclosure of Information

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

Article 5.19: Confidentiality

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

Article 5.20: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Chapter or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.

Article 5.21: Administrative Proceedings

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Chapter in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of another Party in specific cases that:

(a) wherever possible, a person of another Party that is directly affected by such a proceeding is provided with reasonable notice, in accordance with its domestic procedures, of 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 any issue in question;

(b) a person of another Party that is directly affected by such a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) it follows its procedures in accordance with its laws and regulations.

CHAPTER 6

TRADE IN SERVICES

Article 6.1: Reaffirmation

The Parties reaffirm their commitments under the Agreement on Trade in Services.

CHAPTER 7

INVESTMENT

Article 7.1: Reaffirmation

The Parties reaffirm their commitments under the Agreement on Investment.

CHAPTER 8

COMPETITION AND CONSUMER PROTECTION

Section A
General Provisions

Article 8.1: Definitions

For the purposes of this Chapter:

(a) **anti-competitive activities** means any conduct or transaction that adversely affects competition in the relevant market of the territory of a Party. The activities may be subject to penalties or relief under the respective competition laws of the Parties and may include the following:

(i) agreements between businesses and concerted practices, which have as their object or effect the prevention, restriction, or distortion of competition;

(ii) abuse by one or more businesses of a dominant position; or

(iii) mergers and acquisitions which significantly impede effective competition;

(b) **competition law** means:

(i) **for China**, Anti-Monopoly Law of the People's Republic of China and its implementing regulations, and amendments thereof; and

(ii) **for ASEAN**, a national law, or sectoral regulation if applicable, including its implementing regulations, and amendments thereof, that promote or maintain competition in a market by proscribing anti-competitive activities;

(c) **competition law enforcement** means any inquiry, investigation, or proceeding conducted by a competition authority or regulator in relation to the application of the competition law of the respective Parties to proscribe anti-competitive activities;

(d) **confidential information** means any information, which by nature, the sharing of it, is contrary to that Party's laws or regulations, and important interests;

(e) **consumers** means individuals who purchase, receive, use, rent, or obtain goods or services, that are not for commercial purposes;

(f) **consumer protection laws** means laws or regulations that govern consumer rights and the obligations of businesses with regards to protecting consumers from unfair business practices, and the enforcement thereof;

(g) **consumer rights** include the right to the satisfaction of consumers' basic needs, to safety, to be informed, to choose, to be heard, to redress, to be educated, to have personal data protected, and any other rights for a healthy environment and consumption according to the respective applicable laws or regulations of the Parties; and

(h) **unfair business practices**[1] means fraudulent, deceptive, false, or misleading commercial practices or acts that cause harm to the rights and interests of consumers or are in imminent danger of doing so. For clarity, these may include:

(i) making misrepresentations or false claims of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of the misled consumers;

(ii) advertising or offering of goods or services without intention to supply;

(iii) failing to deliver products or provide services to consumers after the consumers are charged; or

(iv) charging or debiting consumers' financial, telephone, or other accounts without authorisation.

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[1] For greater clarity, the term "Unfair Business Practices" applies to consumer protection related provisions in this Chapter.

Article 8.2: Objectives

The objectives of this Chapter are:

(a) to promote competition in markets and protect consumers, through the adoption and maintenance of relevant laws or regulations in proscribing anti-competitive practices and unfair business practices, thereby enhancing economic efficiency and consumer welfare;

(b) to promote regional cooperation on the development and implementation of competition and consumer protection laws, regulations, or policies;

(c) to enhance the capacity of the Parties on the development and implementation of competition and consumer protection laws, regulations, or policies; and

(d) to enhance business and consumer trust and confidence through the promotion of transparent and effective advocacy and enforcement in the area of competition and consumer protection.

The pursuit of these objectives will help the Parties to secure the benefits of this Agreement, including facilitating trade and investment among the Parties.

Article 8.3: Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.

2. Each Party shall recognise the sovereign rights of each Party to develop, set, administer, and enforce its competition and consumer protection laws, regulations, and policies, and the significant differences that exist among the Parties in capacity and level of development in the area of competition and consumer protection.

3. Each Party shall recognise the importance of the implementation of competition and consumer protection laws or regulations, and cooperation among the Parties to achieve the objectives of this Chapter.

4. Each Party shall abide by fair, transparent, and non-discriminatory principles in the implementation of their competition and consumer protection laws or regulations.

Article 8.4: Capacity Building and Technical Cooperation

1. Each Party shall recognise the importance of building the necessary capacities to strengthen and promote the development and enforcement of competition and consumer protection laws or regulations within its reasonably available resources.

2. The Parties shall undertake the following mutually agreed technical cooperation activities:

   (a) sharing of relevant experience and non-confidential information on the development and implementation of competition and consumer protection laws, regulations, or policies;

   (b) training of officials of competition and consumer protection authorities;

   (c) exchange of consultants and experts on competition and consumer protection laws, regulations, or policies;

   (d) participation of officials of competition and consumer protection authorities in advocacy programmes;

   (e) joint effort to increase awareness of competition and consumer protection laws, regulations, or policies among businesses; and

   (f) any other form of technical cooperation as agreed upon by the Parties.

Article 8.5: Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of a Party, the requested Party shall enter into consultations with the requesting Party.

2. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties concerned.

3. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request of the requesting Party.

4. The requested Party shall facilitate discussion and endeavour to achieve amicable resolutions of the matter that is the subject of the consultations.

Article 8.6: Confidentiality of Information

1. This Chapter shall not require the sharing of confidential information by a Party.

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:

   (a) the purpose of the request;

   (b) the intended use of the requested information; and

   (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.

3. The sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned.

4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with its laws or regulations, the Party receiving the information shall:

   (a) maintain the confidentiality of the information received;

   (b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;

   (c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on

request of the Party receiving the information, such information was provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws or regulations of the Parties concerned;

(d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and

(e) comply with any other conditions required by the Party providing the information.

Article 8.7: Committee

The Parties may establish a committee consisting of competition authorities and consumer protection authorities for the implementation of this Chapter, including to undertake liaison and coordination functions.

Article 8.8: Non-Application of Dispute Settlement

The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

Article 8.9: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.[2, 3]

Article 8.10: Security Exceptions

Nothing in this Chapter shall be construed:

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[2] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[3] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

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

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

Section B
Competition

Article 8.11: Appropriate Measures against Anti-Competitive Activities

1. Each Party shall adopt or maintain competition laws or regulations to prohibit anti-competitive activities, and shall enforce those laws or regulations accordingly.

2. Each Party shall establish or maintain an authority or authorities with adequate resources to effectively implement its competition laws or regulations.

3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws or regulations.

4. Each Party shall apply and enforce its competition laws or regulations to all entities engaged in commercial activities, and in a non-discriminatory manner, regardless of their ownership and nationality.

5. Each Party shall ensure that any exclusion or exemption from the application of each Party's competition laws or regulations, is transparent and based on grounds of public policy or public interest.

Article 8.12: Due Process

1. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws or regulations, and any appeal therefrom, subject to:

   (a) its laws or regulations, the need to safeguard confidential information, or the need to safeguard information on grounds of public policy or public interest; and

   (b) redactions from the final decision or order on any of the grounds referred to in subparagraph (a).

2. Each Party shall ensure that any person or entity alleged for breaching its competition laws or regulations is given the reasons for the allegations, in writing where possible, and is given a fair opportunity to be heard and to present evidence.

3. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws or regulations, and any appeal therefrom, available to the person or entity subject to that sanction or remedy.

4. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws or regulations has access to an independent review of or appeal against that sanction or remedy.

5. Each Party shall endeavour to handle competition cases in a timely manner.

6. Each Party shall ensure that any person or entity who has allegedly contravened or is allegedly contravening a Party's competition laws or regulations has a reasonable opportunity to

be represented by legal counsel in accordance with each Party's laws or regulations.

Article 8.13: Transparency

1. Each Party shall endeavour to ensure the transparency of their competition enforcement and advocacy policies, in accordance with each Party's laws or regulations, and important interests.

2. Each Party shall endeavour to make public or require the following to be made public within its reasonably available resources, including on an official website:

   (a) its competition laws or regulations;

   (b) exemptions and immunities to its competition laws or regulations;

   (c) guidelines issued in relation to the administration and enforcement of its competition laws or regulations;

   (d) final decision which resulted from enforcement activities;

   (e) report of market studies; and

   (f) annual report of the implementation of competition laws, regulations, or policies.

3. Each Party shall endeavour to provide public information which may be an interest of the other Party, in English, to promote cooperation among the Parties.

Article 8.14: Cooperation

1. Each Party recognise the importance of cooperation between or among their respective competition authorities to promote the effective enforcement of competition laws or regulations.

2. The Parties may cooperate on issues relating to competition law enforcement, through their respective competition authorities, in accordance with their respective laws or regulations, and important interests, and within their reasonably available resources.

3. The form of such cooperation may include, upon request:

(a) discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interests of the requesting Party;

(b) exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement; and

(c) coordination in enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

Section C
Consumer Protection

Article 8.15: Consumer Protection Law

1. Each Party shall adopt or maintain laws or regulations to prohibit unfair business practices. Laws prohibiting these practices may be civil, criminal, or administrative.

2. Each Party shall ensure their consumer protection laws or regulations contain the following measures:

(a) prohibition of unfair business practices that harm consumers;

(b) obligations for businesses to meet safety and quality standards set by relevant laws and to comply with its claims regarding characteristics, attributes, or performance of the goods or services; and

(c) rights of consumers to seek and obtain redress from businesses, including the redress mechanisms provided by the authorities concerned.

3. Each Party shall establish or maintain a government agency or other relevant agencies with the necessary authorities, resources, and capabilities to effectively implement its consumer protection laws or regulations, including cooperation with other authorities on consumer protection matters, if applicable.

4. Each Party shall apply its consumer protection laws or regulations, in a non-discriminatory manner to all consumers in their jurisdiction, regardless of their nationality.

Article 8.16: Transparency

1. Each Party shall ensure that information relating to consumer protection laws or regulations are publicly available for consumers to seek redress and for businesses to comply with their obligation towards consumers.

2. Each Party shall encourage businesses to publish their consumer protection policies, including redress mechanism.

Article 8.17: Online Consumer Protection

1. The Parties shall provide protection to consumers engaged in electronic commerce no less than that provided to consumers engaged in other forms of commerce under consumer protection law or any other relevant laws or regulations.

2. Each Party recognises the importance of safeguarding consumers' right to information necessary for them to make well informed decisions and providing consumers with the necessary information in a timely, accurate, and complete manner in selling and advertising of goods and services online by businesses.

3. Each Party recognises the importance of consumers' right to return purchased goods in electronic commerce within a certain period in accordance with respective applicable laws or regulations, and may actively share best practices on the right to regret[4] for consumers.

4. The Parties recognise the benefits of alternative dispute resolution to facilitate the resolution of claims over electronic commerce transactions. To this end, the Parties shall endeavour to, where appropriate, share best practices and cooperate on alternative dispute resolution.

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[4] For greater clarity, the "right to regret" is an evolving global practice where consumers unilaterally can return certain goods purchased in electronic commerce without reason within a certain period.

Article 8.18: Protection for Foreign Consumers

Each Party shall endeavour to assist foreign consumers in seeking redress locally by promoting appropriate redress channels and improving their access to necessary information in a manner compatible with its respective laws or regulations and within its reasonably available resources.

Article 8.19: Consumer Dispute Resolution

1. Each Party recognises the importance of robust, effective, and accessible consumer redress mechanisms in protecting consumers.

2. Each Party shall identify and consider appropriate measures to enhance the ability of consumers to seek and obtain timely and effective redress from businesses, and to ensure that businesses provide accessible and adequate redress mechanisms for consumers.

3. Each Party shall establish and maintain the appropriate channels for consumers to lodge complaints.

Article 8.20: Settlement of Unfair Business Practices

1. Recognising that unfair business practices significantly harm the legitimate rights and interests of consumers, the Parties agree that preventing such practices is key to safeguarding the rights and interests of consumers, thus promoting fair transaction between consumers and businesses.

2. Each Party shall endeavour to actively explore ways and exchange best practices to strengthen the prevention and prohibition of unfair business practices in accordance with their laws or regulations, including improving consumer protection and related legislations, carrying out proactive market monitoring or surveillance for consumer protection, and enhancing the administrative enforcement of consumer protection law.

Article 8.21: Cooperation

1. The Parties may cooperate and coordinate on matters of mutual interest related to consumer protection, including the enforcement

of consumer protection laws or regulations. Such cooperation and coordination shall be carried out in a manner compatible with the Parties' respective laws or regulations and within their reasonably available resources.

2. The Parties shall endeavour to share best practices and cooperate on promoting or enhancing the role of domestic consumer associations in empowering and protecting consumers, including the promotion of cooperation between domestic consumer association.

3. The Parties shall endeavour to share best practices and cooperate in strengthening the capacity of businesses to comply with consumer protection laws or regulations.

4. The Parties shall endeavour to share best practices and cooperate on promoting sustainable consumption and encouraging businesses to disclose sustainable consumption information on a voluntary basis.

CHAPTER 9

DIGITAL ECONOMY

Article 9.1: Principles and Objectives

1. The Parties recognise the depth and strength of their close economic relationship, underpinned comprehensively by the Joint Statement of the *ASEAN-China Special Summit to Commemorate the 30th Anniversary of ASEAN-China Dialogue Relations*; and recognise the significant economic growth and opportunities provided by digital economy. To this end, the Parties agree to create more opportunities and foster new areas of cooperation in the digital economy and realise digital transformation taking into account each Party's readiness, in terms of capacity, regulations, and infrastructures.

2. The Parties will jointly foster an open, inclusive, fair, and equitable environment for the development of the digital economy, narrow the digital divide and promote digital connectivity.

3. The Parties acknowledge the importance of a safe and reliable digital environment as well as frameworks and policies, that support innovation in facilitating the development and cooperation of the digital economy between the Parties.

4. The Parties are committed to promoting the prosperous development of the digital economy in the region.

5. The objectives of this Chapter are to:

   (a) deepen economic relations and support the growth of the digital economy cooperation between the Parties, including by leveraging emerging technologies;

   (b) contribute to creating an environment of trust and confidence in the use of the digital economy;

   (c) enhance cooperation among the Parties regarding the development of the digital economy;

   (e) facilitate greater business-to-business and research links between the Parties in the digital economy; and

(f) promote inclusive development of the digital economy, such as by enhancing access for micro, small and medium enterprises to the digital economy.

Article 9.2: Definitions

For the purposes of this Chapter:

(a) **computing facilities** means computer servers and storage devices for processing or storing information for commercial use;

(b) **covered person** means:

(i) a "covered investment" as defined with respect to Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of the ACFTA 3.0 Upgrade Protocol or established, acquired, or expanded thereafter, and which, where applicable, has been admitted[1, 2] by the host Party, subject to its relevant laws, regulations, and policies;[3]

(ii) an "investor of a Party" as defined as a natural person of a Party or a juridical person of a Party that seeks to make,[4] is making, or has made an investment in the territory of another Party, but does

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[1] For Malaysia and Thailand, protection under this Chapter shall be accorded to covered investments which, where applicable, have been specifically approved in writing for protection by their respective competent authorities in accordance with their respective laws, regulations, and policies.

[2] For Cambodia, Indonesia, and Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

[3] For the purposes of this definition, "policies" means those policies affecting an investment that are endorsed and announced by the government of a Party in a written form and made publicly available in a written form.

[4] For greater certainty, the Parties understand that an investor "seeks to make" an investment when that investor has taken concrete action or actions to make an investment. Where a notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor that has initiated such notification or approval process.

not include an investor in a financial institution or an investor in a financial service supplier[5]; or

(iii) a "service supplier" as defined in the *Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and the People's Republic of China*,

but does not include a "financial service supplier" and "public entity" as defined in Article 5 (Definitions) of the Annex on Financial Services of the WTO General Agreement on Trade in Services (GATS);

(c) **customs duty** means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with paragraph 2 of the Article III of WTO General Agreement on Tariffs and Trade 1994 (GATT 1994);

(ii) anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement"), and the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"); or

(iii) fees or other charges commensurate with the cost of services rendered;

(d) **electronic authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

(e) **electronic invoicing** means the exchange and processing of an invoice between a supplier and a buyer using a structured digital format;

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[5] "Financial service supplier" is as defined in in Article 5 (Definitions) of the Annex on Financial Services of the WTO General Agreement on Trade in Services (GATS).

(f) **electronic payment** means the payer's transfer of a monetary claim on a person that is acceptable to the payee and made through electronic means, but does not include payment services of central banks involving settlement between financial service suppliers[6];

(g) **enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately owned or governmentally owned including any corporation, trust, partnership, joint venture, sole proprietorship, association, or similar organization;

(h) **existing** means in effect on the date of entry into force of the ACFTA 3.0 Upgrade Protocol;

(i) **financial services** is as defined in subparagraph 5(a) of the Annex on Financial Services of GATS;

(j) **financial technology** ("**FinTech**") means the use of technology to improve and automate the delivery and use of financial services according to the respective Party's domestic laws and regulations;

(k) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(l) **person** means a natural person or an enterprise;

(m) **personal data** means any information relating to an identified or identifiable natural person;

(n) **public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

(o) **public telecommunications service** means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include telegraph, telephone, telex, and data

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[6] For greater certainty, nothing in this Article requires a Party to grant electronic payments services suppliers of another Party not established in its territory access to payment services of central banks that involve settlement between financial services suppliers.

transmission typically involving the real-time transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

(p) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods; and

(q) **unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient.[7]

Article 9.3: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party that affect the digital economy.

2. This Chapter shall not apply to:

   (a) financial services provided by, financial services supplier, and public entity, except for Article 9.9 (Electronic Payments) and Article 9.19 (Financial Technology Cooperation);

   (b) government procurement; or

   (c) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

3. Article 9.9 (Electronic Payments), Article 9.11 (Cross-Border Transfer of Information by Electronic Means), and Article 9.12 (Location of Computing Facilities) shall not apply to aspects of a Party's measures that do not conform with an obligation in Agreement on Trade in Services or the Agreement on Investment

[7] A Party may apply the definition to unsolicited commercial electronic messages delivered through one or more modes of delivery, including Short Message Service (SMS) or e-mail. Notwithstanding this footnote, the Parties should endeavour to adopt or maintain measures consistent with Article 9.14 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

to the extent that such measures are adopted or maintained in accordance with:

(a) any terms, limitations, qualifications, and conditions specified in a Party's commitments, or are with respect to a sector that is not subject to a Party's commitments, made in accordance with Article 21 (Schedule of Specific Commitments) in Agreement on Trade in Services; or

(b) any exception that is applicable to the obligations in Agreement on Trade in Services or Agreement on Investment.

Article 9.4: Paperless Trading

1. Each Party shall:

   (a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by relevant international organisations, including the World Customs Organization;

   (b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents;

   (c) endeavour to make trade administration documents available to the public in electronic form; and

   (d) endeavour to provide electronic versions of trade administration documents referred to in this paragraph in English.

2. Noting the obligations in the WTO Trade Facilitation Agreement, each Party shall establish or maintain a single window that endeavours to enable traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies.

3. The Parties shall endeavour to establish or maintain a seamless, trusted, high-availability[8] and secure interconnection of their

[8] For greater certainty, "high-availability" refers to the ability of a single window to continuously operate. It does not prescribe a specific standard of availability.

respective single windows to facilitate the exchange of agreed data relating to trade administration documents, according to their domestic laws and regulations, and readiness in terms of capacity and infrastructure. Such trade administration documents shall be jointly determined by the Parties.

4. The Parties recognise the importance of the exchange of electronic records[9] used in commercial trading activities between the Parties' businesses. To this end, the Parties are encouraged to explore and facilitate the use and exchange of electronic records used in commercial cross-border trading activities between the Parties' businesses where relevant in each jurisdiction, such as electronic bills of lading.

5. The Parties shall cooperate and collaborate on initiatives which promote and advance the use and adoption of the data exchange systems referred to in paragraphs 3 and 4 in accordance with their domestic laws and regulations, and readiness in terms of capacity and infrastructure, including through:

   (a) sharing of information, experiences, and best practices in the area of development and governance of the data exchange systems; and

   (b) collaboration on pilot projects in the development and governance of data exchange systems.

6. In developing other initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by relevant international organisations.

Article 9.5: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a

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[9] For the purposes of this provision, "electronic records" means information generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another or as otherwise set out in each Party's respective laws and regulations. For greater certainty, information, where appropriate, includes all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.

signature solely on the basis that the signature is in electronic form.[10]

2. Taking into account international norms for electronic authentication, each Party shall:

   (a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;

   (b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and

   (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic authentication.

3. Notwithstanding paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.6: Domestic Electronic Transactions Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions consistent with the principles of the *United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996) or the United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York on 23 November 2005.

2. Each Party shall maintain or endeavour to adopt a legal framework which takes into account the *UNCITRAL Model Law on Electronic Transferable Records (2017)*.

3. Each Party shall endeavour to:

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[10] Cambodia and Myanmar shall not be obliged to apply paragraph 1 before 1 January 2027.

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) take into account input by interested persons[11] in the development of its legal framework for electronic transactions, including in relation to trade documentation.

Article 9.7: Logistics

1 The Parties recognise the importance of efficient cross-border logistics which help lower the cost and improve the speed and reliability of supply chains.

2. The Parties shall endeavour to share best practices regarding the logistics sector, including the following:

(a) last mile deliveries, including on-demand and dynamic routing solutions;

(b) the use of electric, remote controlled, and autonomous vehicles;

(c) facilitating the availability of cross-border options for the delivery of goods, such as federated lockers and parcel lockers;

(d) new delivery and business models for logistics; and

(e) end-to-end multi modal digital tracking system for deliveries.

Article 9.8: Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. The Parties also recognise the benefits of interoperable electronic invoicing systems. When developing measures related to electronic invoicing, a Party shall endeavour to take into account international standards, where applicable,

[11] For the purposes of paragraph 3, a Party may limit "interested persons" to those persons provided for in, and in accordance with, its laws and regulations.

and in accordance with its readiness in terms of capacity, regulations and infrastructure.

2. In accordance with each Party's readiness in terms of capacity, regulations, and infrastructure, each Party shall endeavour to ensure that the implementation of measures related to electronic invoicing in its territory supports cross-border interoperability between the Parties' electronic invoicing frameworks.

3. The Parties recognise the economic importance of promoting the adoption of interoperable electronic invoicing systems. To this end, the Parties shall endeavour to, where appropriate, share best practices and collaborate on promoting the adoption of interoperable systems for electronic invoicing.

4. The Parties agree to cooperate and collaborate on initiatives which promote, encourage, support, or facilitate the adoption of electronic invoicing by enterprises. To this end, the Parties shall endeavour to:

   (a) promote the existence of policies, infrastructure, and processes that support electronic invoicing;

   (b) generate awareness of, and build capacity, for electronic invoicing; and

   (c) where appropriate, exchange information and cooperate on practices of electronic invoicing.

Article 9.9: Electronic Payments[12]

1. Recognising the rapid growth of electronic payments, in particular those provided by new payment service providers, the Parties shall to the extent practicable support the development of efficient, safe and secure cross-border electronic payments by:

   (a) fostering the adoption and use of internationally accepted standards for electronic payments;

   (b) promoting interoperability and the inter-connection of electronic payment infrastructures; and

[12] For greater certainty, nothing in this Article shall be construed to impose an obligation on a Party to modify its domestic rules on payments, including the need to obtain licences or permits or the approval of access applications.

(c) encouraging innovation and fair competition in electronic payments services.

2. To this end, and in accordance with their respective laws and regulations, each Party shall, to the extent practicable, endeavour to:

(a) make publicly available, in a timely manner, regulations on electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards;

(b) take into account, for relevant electronic payment systems, international standards for electronic payment messaging such as, but not limited to the International Organization for Standardization Standard ISO 20022 Universal Financial Industry Message Scheme, for electronic data exchange between financial institutions and service suppliers to enable greater interoperability between electronic payment systems;

(c) facilitate the use of open platforms and architecture such as tools and protocols provided for through Application Programming Interfaces ("APIs") and encourage financial institutions and payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation and competition in electronic payments;

(d) enable cross-border authentication and electronic know-your-customer of individuals and businesses using digital identities;

(e) recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulation, and that to the extent practicable the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

(f) facilitate innovation and competition on a level playing field and recognise the importance of enabling the introduction of new financial and electronic payment products and

services in a timely manner such as through adopting regulatory and industry sandboxes;

(g) not arbitrarily or unjustifiably discriminate between financial institutions and other payment service providers in relation to access to services and infrastructure necessary for the operation of electronic payment systems; and

(h) finalise decisions on regulatory or licensing approvals in a timely manner.

Article 9.10: Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.

2. The practice referred to in paragraph 1 is in accordance with the WTO Ministerial Decision adopted on 2 March 2024 in relation to the Work Programme on Electronic Commerce (WT/MIN(24)/38).

3. Each Party may adjust its practice referred to in paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.

4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

Article 9.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall not prevent the cross-border transfer of information by electronic means, where such activity is for the conduct of the business of a covered person.[13]

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

   (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,[14] provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

   (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

Article 9.12: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.[15]

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

   (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy

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[13] Cambodia, Lao PDR and Myanmar shall not be obliged to apply pragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply paragraph 2 before 1 January 2027.

[14] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

[15] Cambodia, Lao PDR and Myanmar shall not be obliged to apply paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply paragraph 2 before 1 January 2027.

objective,[16] provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

Article 9.13: Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of participants in the digital economy and the importance of such protection in enhancing confidence in the digital economy and development of trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal data of the users of electronic commerce and digital trade. In the development of its legal framework for the protection of personal data, each Party shall take into account principles and guidelines of relevant international bodies.[17,18]

3. The Parties recognise that the principles underpinning a robust legal framework for the protection of personal data may include:

   (a) collection limitation;

   (b) data quality;

   (c) purpose specification;

   (d) use limitation;

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[16] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

[17] For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures, such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering data protection or privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to data protection or privacy.

[18] Cambodia, Lao PDR and Myanmar shall not be obliged to apply paragraph 2 before 1 January 2027.

(e) security safeguards;

(f) transparency;

(g) individual participation; and

(h) accountability.

4. Each Party shall adopt or maintain laws or regulations that are non-discriminatory in protecting users of electronic commerce from personal data protection violations occurring within its jurisdiction.

5. Each Party shall publish information on the personal data protection it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) businesses can comply with any legal requirements.

6. Recognising that the Parties may take different legal approaches to protecting personal data, each Party shall encourage the development and adoption of mechanisms to promote compatibility and where appropriate, interoperability, between different legal frameworks for protecting personal data. The Parties also recognise that, in accordance with their respective laws and regulations, there are other existing mechanisms, including contractual provisions, for the transfer of personal data across their territories to ensure the protection of personal data.

7. The Parties shall endeavour and encourage relevant stakeholders to exchange information on how the mechanisms referred to in paragraph 6 are applied in their respective jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility and, where appropriate, interoperability between them.

8. In accordance with each Party's policies, laws and regulations, the Parties shall encourage the development of tools for businesses to demonstrate compliance with personal data protection principles, guidelines or best practices.

9. The Parties shall endeavour to exchange information and share experiences on the compliance tools referred to in paragraph 8.

Article 9.14: 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 stop receiving such messages;

   (b) require the consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages; or

   (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party[19] shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 9.15: Cybersecurity

1. The Parties have a shared vision to promote a secure cyberspace to achieve global prosperity and recognise that cybersecurity underpins the digital economy.

2. The Parties recognise the importance of:

   (a) building the capabilities of their respective competent authorities responsible for computer security incident responses including through the exchange of best practices; and

   (b) using existing collaboration mechanisms to cooperate on matters related to cybersecurity.

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[19] Myanmar shall not be obliged to apply paragraph 2 before 1 January 2027.

Article 9.16: Digital Infrastructure Connectivity

1. The Parties recognise the fundamental role of digital infrastructure in fostering the digital economy, and the importance of creating an enabling environment for enhancing digital infrastructure development and resilient digital infrastructure connectivity.

2. To this end, the Parties shall endeavour to share best practices and experiences, and explore collaborative initiatives in areas of mutual interest, including through other existing international fora that they are a member of.

3. A Party shall not prevent suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services.

4. Notwithstanding paragraph 3, a Party may apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

Article 9.17: Digital Identities

1. Recognising that cooperation between the Parties on digital identities, individual or businesses, will increase regional and global connectivity in the digital economy, and recognising that each Party may take different legal and technical approaches to digital identities, the Parties shall endeavour to pursue the development of mechanisms to promote where possible and practicable, compatibility or interoperability between their respective digital identity regimes.

2. To this end, in accordance with each Party's readiness in terms of capacity, regulations and infrastructure, the Parties shall endeavour to facilitate initiatives to promote such compatibility or interoperability, which may include:

   (a) developing or adopting appropriate frameworks to foster technical interoperability between each Party's implementation of digital identities;

(b) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and the promotion of the use of digital identities; and

(c) facilitating the implementation of use cases for the mutual recognition of digital identities.

3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraphs 1 and 2 to achieve what it considers a legitimate public policy objective.

Article 9.18: Artificial Intelligence

1. The Parties recognise that the trustworthy, safe, secure, and responsible use and adoption of Artificial Intelligence ("AI") technologies are becoming increasingly important within a digital economy offering social and economic benefits to individuals and organisations. The Parties further recognise that each Party may take different legal approaches to use and develop AI. In accordance with their respective policies, laws and regulations, each Party shall cooperate to optimise the advantages these technologies offer and mitigate the potential risks, through:

(a) encouraging the sharing of knowledge and best practices of AI technology development, industry practices and their governance;

(b) promoting and sustaining the responsible, safe, trustworthy, secure and ethical design, development, deployment and use of AI technologies by businesses and across the community;

(c) encouraging the development of an innovation ecosystem and commercialisation opportunities through collaboration between governments, academia, industries, and communities; and

(d) encouraging cooperation on AI governance principles and ethics.

2. The Parties also recognise the importance of developing ethical governance frameworks for the trustworthy, safe, secure, and responsible use of AI technologies that will help realise the

benefits of AI. In view of the cross-border nature of the digital economy, the Parties further acknowledge the benefits of ensuring that such frameworks are internationally aligned as far as practicable.

3. To this end, the Parties shall endeavour to:

(a) collaborate on and promote the development and adoption of frameworks that support the trustworthy , safe, secure and responsible use of AI technologies, through relevant regional and international fora;

(b) take into consideration internationally-recognised principles or guidelines when developing such frameworks.

Article 9.19: Financial Technology Cooperation[20]

The Parties shall encourage cooperation between their FinTech industries. The Parties recognise that effective cooperation regarding FinTech will require the involvement of businesses. To this end, consistent with the laws and regulations of the respective Parties, the Parties shall:

(a) encourage cooperation on FinTech through their respective policy and trade promotion agencies and regulators;

(b) encourage closer and stronger collaboration between their respective FinTech enterprises and industry bodies;

(c) encourage development of FinTech solutions for business or financial sectors;

(d) encourage collaboration of entrepreneurship or start-up talent between the Parties in FinTech;

(e) encourage their respective FinTech enterprises to use facilities and assistance, where available, in the other Parties' territories to explore new business opportunities,

[20] For greater certainty, nothing in this Article shall be construed to impose an obligation on a Party to modify its domestic rules on regulation and supervision of financial service providers, including the need to obtain licences or permits or the approval of access applications.

including through the use of streamlined licencing processes and access to regulatory sandboxes where applicable; and

(f) cooperate in relevant regional and international fora to improve opportunities for FinTech enterprises.

Article 9.20: Micro, Small, and Medium Enterprises

1. The Parties recognise the important role of micro, small, and medium enterprises in maintaining and enhancing competitiveness in digital economy.

2. With a view towards enhancing trade and investment opportunities for micro, small, and medium enterprises in the digital economy, the Parties shall endeavour to:

(a) exchange information and best practices in leveraging digital tools and technology to improve the capabilities and market reach of micro, small, and medium enterprises;

(b) encourage participation by micro, small, and medium enterprises in online platforms and other mechanisms that could help micro, small, and medium enterprises link with international suppliers, buyers and other enterprises or potential business partners to mutually benefit from the digital economy;

(c) foster close cooperation on the digital economy between micro, small, and medium enterprises of the Parties;

(d) encourage the collaboration between micro, small, and medium enterprises with appropriate experts, international organisations and private sector in promoting the use of digital technologies by micro, small, and medium enterprises; and

(e) cooperate in other areas of mutual interest, such as capacity-building initiatives that could help micro, small, and medium enterprises adapt and thrive in the digital economy.

Article 9.21: Digital Inclusion

1. The Parties recognise the importance of digital inclusion and that all people and businesses including micro, small, and medium enterprises can participate in, contribute to, and benefit from the digital economy. To this end, the Parties recognise the importance of expanding and facilitating opportunities in the digital economy by addressing barriers to, and encouraging participation in, the digital economy. The Parties also recognise that this may require tailored approaches, developed in consultation with any individuals and groups that disproportionately face such barriers and other relevant stakeholders.

2. To promote digital inclusion, the Parties shall endeavour to cooperate on matters relating to digital inclusion. This may include:

   (a) identifying and addressing barriers to accessing opportunities in the digital economy;

   (b) developing initiatives to promote participation of all groups in the digital economy;

   (c) sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and

   (d) cooperation in other areas as jointly agreed by the Parties.

Article 9.22: Capacity Building

1. The Parties shall endeavour to cooperate on capacity building in the region on issues including:

   (a) digital connectivity;

   (b) micro, small, and medium enterprises digital transformation;

   (c) data protection regimes;

   (d) mechanisms to facilitate the cross-border transfer of information; and

(e) cross-border e-commerce, including policy and regulatory practice sharing.

2. The Parties agree to work together to promote digital economy cooperation, including at the domestic level, by making full use of the outcomes of this Chapter.

Article 9.23: Transparency

1. The Parties shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available, including on the internet where feasible, all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Upon request of a Party, the English version of such publication shall, to the extent practicable, be furnished to the requesting Party.

3. The Parties shall respond as promptly as possible to a relevant request from another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

4. Consistent with its respective domestic policies, laws, and regulations, each Party shall endeavour to:

   (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt or provide in advance an explanation of the objective of and rationale for the measure;

   (b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures, including consultations; and

   (c) allow a reasonable period of time between the publication of the measure and its entry into force.

Article 9.24: Digital Trade Standards

1. The Parties recognise the important role of relevant international standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease

trade compliance costs and increase interoperability, reliability, and efficiency.

2. Each Party shall, where appropriate, encourage the adoption of international standards that support digital trade.

3. The Parties shall endeavour to explore collaborative initiatives, share best practices and exchange information on standards, technical regulations and conformity assessment procedures in areas of mutual interest with a view to facilitating electronic commerce and digital trade.

Article 9.25: Anti-Online Scams

1. The Parties recognise that the adverse impacts of online, digital, and telecommunication scams, have become worse and more widespread all over the world, undermining trust and safety in the digital economy.

2. To build a safer and more secure environment to optimize the benefits of the digital economy, the Parties recognise that it is necessary to elevate their collaborative efforts and strengthen cooperation on mitigating and combating online, digital, and telecommunication scams. To this end, the Parties shall, in accordance with their respective laws and regulations, endeavour to:

   (a) share information and best practices on mitigating and combating online, digital and telecommunications scams. Such information and best practices may include:

      (i) policy, legal, regulatory and technical developments;

      (ii) awareness raising activities; and

      (iii) government or regulatory enforcement solutions;

   (b) conduct activities to build capabilities on mitigating and combating online, digital and telecommunications scams such as through workshops, seminars or forums; and

   (c) cooperate in other mutually beneficial activities as agreed by the Parties.

Article 9.26: Work Programme

1. The Parties shall establish a committee to facilitate the implementation of this Chapter.

2. The Parties shall, within two years after the date of entry into force of the ACFTA 3.0 Upgrade Protocol, unless the Parties agree otherwise, commence discussions on the following areas:

   (i) data innovation and big data;

   (ii) non-discriminatory treatment of digital products;

   (iii) cross-border electronic commerce;

   (iv) source code; and

   (v) information and communication technology products that use cryptography.

3. Further to paragraph 2, the work programme may also include discussions on other areas, based on the Parties' mutual interest and agreement.

4. The Parties shall conclude discussions on the work programme no later than two years from the date of commencement of those discussions, or unless the Parties agree otherwise.

5. The outcomes of the work programme initiated under this Article shall be reported to the ACFTA-JC.

Article 9.27: Settlement of Disputes

1. Unless otherwise provided in this Chapter, the Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall apply to this Chapter, subject to the following:

   (a) the Agreement on Dispute Settlement Mechanism shall not apply to Article 9.10 (Customs Duties), Article 9.11 (Cross-Border Transfer of Information by Electronic Means), Article 9.12 (Location of Computing Facilities), and Article 9.13 (Personal Data Protection) until five years after the date of entry into force of the ACFTA 3.0 Upgrade Protocol; and

(b) in relation to Cambodia, Lao PDR, and Myanmar, the Agreement on Dispute Settlement Mechanism shall not apply to any matter arising under this Chapter.

2. Notwithstanding subparagraph 1(b), the Agreement on Dispute Settlement Mechanism may apply in relation to Cambodia, Lao PDR, and Myanmar after a review of the application of the Agreement on Dispute Settlement Mechanism to this Chapter for Cambodia, Lao PDR, and Myanmar, which shall commence within 10 years of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party. In the course of that review, which shall be completed within three years from the date of its commencement, Cambodia, Lao PDR, and Myanmar shall give due consideration to applying the Agreement on Dispute Settlement Mechanism to either the whole or parts of this Chapter.

3. In the event of any difference between the Parties regarding the operation, interpretation, or application of Article 9.10 (Customs Duties), Article 9.11 (Cross-Border Transfer of Information by Electronic Means), Article 9.12 (Location of Computing Facilities), or Article 9.13 (Personal Data Protection), the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

4. In the event of any difference between Cambodia, Lao PDR, or Myanmar, or between Cambodia, Lao PDR, or Myanmar and another Party, regarding the operation, interpretation, or application of this Chapter while the Agreement on Dispute Settlement Mechanism does not apply in relation to Cambodia, Lao PDR, and Myanmar, the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

5. In the event that the consultations referred to in paragraph 3 or 4 fail to resolve the difference, any Party engaged in the consultations may refer the matter to the ACFTA-JC.

Article 9.28: Provision of Information

On request of any Party, the requested Party shall promptly provide information and respond to questions pertaining to any actual laws, regulations, procedures, and administrative rulings of general

application with respect to any matter covered by this Chapter that the requesting Party considers may affect the operation of this Chapter.

Article 9.29: Disclosure of Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would be contrary to its laws and regulations or impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 9.30: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Chapter or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.

Article 9.31: Confidentiality

Unless otherwise provided in this Chapter, where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

Article 9.32: Contact Points

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

Article 9.33: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into

and made part of this Chapter, *mutatis mutandis*.[21, 22]

Article 9.34: Security Exceptions

Nothing in this Chapter shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

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

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

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[21] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[22] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

CHAPTER 10

GREEN ECONOMY

Section A
Basic Principles and Objectives

Article 10.1: Definitions

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

(a) **clean energy** means any energy source that generates energy resulting in low or zero greenhouse-gas emissions, including energy generated from low or zero-emission technologies that significantly reduce greenhouse gas emissions, or any solution that improve energy efficiency and conservation;

(b) **green economy** means economic activities that promote new opportunities to support regional low-carbon economies, climate resilient development, and sustainable development;

(c) **green skills** means a range of technical knowledge, expertise, and abilities that enable the effective use of green technologies and processes in professional settings. They draw on a range of knowledge, values, and attitudes to facilitate environmentally sustainable decision-making at work and in life;

(d) **new energy** means any energy resource that is systematically developed and utilised on the basis of new technologies that encourages the adoption of clean and renewable energy, and enhances resilience against the impacts of climate change;

(e) **standards, technical regulations, and conformity assessment procedures** shall have the same meanings as in the WTO Agreement on Technical Barriers to Trade; and

(f) **sustainable finance** means public and private financial flows for activities that address climate change mitigation

and adaptation as well as other environmental issues to support green growth.

Article 10.2: Objectives

The objectives of this chapter are to:

(a) promote a green and climate resilient economy, cultivate new growth engines such as clean and renewable energy and green industry, innovation, best available techniques, and focus on promoting high-quality development that will contribute towards low carbon, resource efficiency, and climate resilient development and sustainable development;

(b) intensify cooperation on areas of mutual interests on green economy such as green trade, green investment, and green finance to support regional low carbon, climate resilient development, and sustainable development, to achieve common prosperity; and

(c) jointly promote a regional energy transition and enhance technology sharing in energy efficiencies, clean, and renewable energies.

Article 10.3: Basic Principles

1. The Parties reaffirm commitment to uphold principles set by the *Stockholm Declaration on the Human Environment* done at Stockholm on 16 June 1972, the *Rio Declaration on Environment and Development* done at Rio de Janeiro on 14 June 1992, *Agenda 21 on Environment and Development* done at Rio de Janeiro on 14 June 1992, the *Johannesburg Plan of Implementation on Sustainable Development* done at Johannesburg on 4 September 2002, *The Future We Want of 2012* done at Rio de Janeiro on 22 June 2012, *Transforming our world: the 2030 Agenda for Sustainable Development* done at New York on 25 September 2015, as well as obligations under the *United Nations Framework Convention on Climate Change* done at Rio de Janeiro on 9 May 1992 and the *Paris Agreement*, and other related multilateral environmental agreements that China and ASEAN Member States are parties to.

2. The Parties recall the statements and visions put forward jointly by ASEAN and China to promote sustainable development in the region.

3. The Parties recognise the importance of upholding development as a priority, benefits for all, innovation-driven development, living in harmony with nature, as well as results-oriented actions.

4. The Parties recognise the sovereign rights of each Party to develop, set, administer, enforce and modify its laws, regulations, and policies relevant to trade and environment, and climate change accordingly.

5. The Parties recognise that it is inappropriate to use environmental standards as a disguised means of trade protectionism. The Parties also recognise that weakening or reducing levels of protection in the environmental standards to encourage trade or investment is inappropriate.

6. The Parties recognise the importance of taking action on climate change and environmental protection in a manner that promotes and not restrict trade and investment, and achieve mutually beneficial outcomes, particularly through cooperation in supply chains, standards and conformity assessment procedures, sustainable agriculture, clean energy, green finance, green technology, and the circular economy.

7. The Parties recognise the importance of cooperation in sustainable infrastructure to support individual and collective efforts to address climate change and promote environmental sustainability and green growth.

8. The Parties recognise the importance of promoting dialogue and sharing of knowledge, best practices, expertise, and information on climate action and environmental protection, increasing policy communication and experience sharing, as well as exploring common plans and strategies for sustainable development while considering national circumstances of each Party.

Article 10.4: Environmental Goods and Services

1. The Parties recognise that trade and investment are central to a green economy and that environmental goods and services are important in supporting the transition to sustainable economic growth and development of green industries, sectors, and

markets. Accordingly, the Parties will endeavour, to the extent possible, to address barriers to trade and strengthen investment cooperation for environmental goods and services.

2. To enable and improve trade in environmental goods and services among the Parties and to expand trade and investment opportunities for businesses and industry in the green economy, the Parties will explore potential collaboration in areas, such as identifying environmental goods and services, facilitating trade including through the use of digital technologies, standards, technical regulations, and conformity assessment procedures for environmentally-friendly products, and promoting the use of more efficient, cleaner, or renewable energy sources for the production of manufactured goods.

Article 10.5: Cooperation and Capacity Building

1. The Parties are committed to strengthening cooperation in education, joint research, and development projects in priority areas, as well as to fostering demand for green products and services to stimulate innovation, competitiveness, and long-term sustainable development.

2. The Parties recognise the importance of data and evidence-based analysis and will encourage the use of this information to facilitate the implementation of our cooperation.

3. Taking into account national circumstances and respective pathways and approaches towards low greenhouse gas emissions and climate resilient development, the Parties will endeavour to work jointly to facilitate new green growth and workforce opportunities such as exploring innovative initiatives.

4. The Parties are committed to working together to build capacity and share knowledge, best practices, expertise, information exchange, technical assistance, and other forms of cooperation to promote a better understanding of the challenges of transitioning to economies, to assist in implementing the agreement and enhancing its benefits, with the intention of accelerating economic growth towards a green economy.

Section B
Priority Areas of Cooperation

Article 10.6: Green Trade

1. The Parties recognise that international trade is an engine for inclusive economic growth and poverty reduction and contributes to the promotion of sustainable development. The Parties further recognise that green trade is central to green economy, which can promote and strengthen the development of green industries, sectors, and markets through the delivery of environmental goods and services, and support the transition to sustainable economic growth.

2. The Parties recognise the importance to promote the development of 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 relationship.

3. The Parties agree that the provisions of this Chapter shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade among the Parties.

4. The Parties are encouraged to utilise various promotional activities such as exhibitions, forums, and fairs to collaborate and to build platforms for the development of green trade and promote trade of green products and services.

Article 10.7: Green Investment

1. The Parties recognise that investment is a major driver of productivity, inclusive economic growth and job creation, and green investment can play an important role in promoting green economy towards sustainable development.

2. The Parties agree to strengthen green investment cooperation and promotion in green industry and green services, such as clean energy and environmental protection, ecological environment, ecological agriculture, green tourism, and low carbon technologies to improve the sustainable development of investment cooperation projects and contribute to the Parties efforts to transition to green economies, circular economy, and green skills development.

3. The Parties may enhance mutual understanding of green investment strategies and policies through holding meetings, seminars, and forums, among others.

4. The Parties may promote green investment cooperation in cooperation projects among China and ASEAN Member States.

5. The Parties may encourage relevant stakeholders, such as government agencies, local government, industry associations, chambers of commerce, financial institutions and enterprises, to strengthen contact, explore new cooperation opportunities in green investment, and ensure that their cooperation continues to be improved and more forward-looking.

Article 10.8: Circular Economy

1. The Parties recognise that Sustainable Development Goal 12 (ensure sustainable consumption and production patterns) in the United Nations 2030 Agenda for Sustainable Development can contribute to circular economy. The Parties will encourage and promote green consumption and production, and low-carbon ways of life.

2. The Parties encourage circular economy approaches to maintain products, materials, and resources in the economy for as long as possible, and to return the waste from production and consumption into the value chain, to minimise waste generation and environmental impacts; and contribute to more sustainable production and consumption.

3. The Parties may strengthen experience and information sharing, communication, cooperation, joint research, and endeavour to consider the possibility of transfer of technology on voluntary and mutually agreed terms in the following aspects, including:

   (a) plastic pollution control, extended producer responsibility, facilitating circulation of materials for recycling, eco products, eco-design, eco-label, waste-to-energy, green industry implementation, and green distribution; and

   (b) the best practices in applying circular economy models in areas such as agriculture, energy, transportation, green building and infrastructure, waste and plastic management, and others.

Article 10.9: Sustainable Finance

1. The Parties recognise that the establishment and improvement of sustainable finance can help bring into play the role of financial markets in optimising resources to promote green and climate resilient economy.

2. The Parties may strengthen experience sharing, communication, and cooperation in the following aspects, including sustainable financial products and market systems, sustainable finance policies and standard systems, transition finance standards, the construction of local pilot zones for sustainable finance reform and innovation and pursue cooperation with multilateral development banks to support financing and investment in green projects.

3. The Parties acknowledge the vital role of the international standards, the ASEAN Taxonomy for Sustainable Finance, China's taxonomies, and respective ASEAN Member States' Sustainable Finance taxonomies in promoting and supporting transition to circular economy, green economy, low-carbon and climate resilient economies, Sustainable Development Goals as well as the importance of advancing comparability and interoperability of taxonomies and international standards for sustainable finance in supporting more efficient, lower-cost cross-border green capital flows. The Parties shall pursue cooperation with multilateral development banks to promote knowledge sharing and capacity building in sustainable finance in general and in developing sustainable finance markets in particular for member countries through regional cooperation mechanisms.

Article 10.10: Green Technology

1. The Parties recognise that green technology is an engine for environmental protection, mitigation, and adaptation to climate change which can provide important support for the development of green economy.

2. The Parties will jointly build a closer partnership on science, technology and innovation, such as low-carbon technologies, sustainable and green infrastructure, environmental industry, green industry through ASEAN-China Plan of Action on a Closer Partnership of Science, Technology and Innovation for Future (2021-2025) and the subsequent plans of action, and the launching of the ASEAN-China Science, Technology and

Innovation Enhancing Programme, to further enhance exchanges on innovative development of science and technology of ASEAN Member States and China and foster new impetus for cooperation.

3. The Parties may strengthen experience sharing, communication and cooperation in the following aspects, including, innovation and integration of green technology, research and development of green technology equipment, development of green technology research institutions, commercialisation of green technology research findings, trial and pilot extension of green technology, support relevant stakeholders, including micro, small and medium enterprises in adopting green technology, and capacity building for green development.

Article 10.11: Green Standards, Technical Regulations, and Conformity Assessment Procedures

1. The Parties recognise that cooperation on standards, technical regulations, and conformity assessment procedures can increase compatibility and interoperability of systems and processes and reduce barriers to trade which support a well-functioning green economy. The Parties also recognise that information exchange and transparency with regard to the preparation, adoption, application, and maintaining the standards, technical regulations, and conformity assessment procedures on green economy are important for international cooperation.

2. The Parties may strengthen experience sharing, communication, and cooperation in the following aspects, including:

   (a) encouraging, where appropriate, the harmonisation to international standards relating to green economy, in areas that are of mutual interest to the Parties; and

   (b) promoting dialogue and cooperation on standards, technical regulations, and conformity assessment procedures related to green economy, in particular, new energy products such as new energy batteries, new energy vehicles and related components and parts, in order to reduce trade barriers, and promote the development of green trade and investment.

3. The Parties recognise that mechanisms which facilitate the cross-border recognition of conformity assessment results can support

the green economy. The Parties will endeavour to avail such mechanisms, subject to their respective laws and regulations, which include the acceptance of conformity assessment results by regulators using international recognition agreements or arrangements that both Parties are Party to, in order to reduce duplicate testings, so as to facilitate trade.

4. The Parties may encourage coordination in setting up of international standards such as the Codex Alimentarius standards and increase coherence among standards.

Article 10.12: Sustainable Energy

1. The Parties recognise the importance of accelerating the construction of a new energy system, increasing the proportion of clean energy consumption, and promoting the green and low-carbon transition of the energy structure.

2. The Parties may promote knowledge sharing in clean and low-carbon energy technologies and advance energy transition in the region, including through the proposed establishment of the ASEAN-China Clean Energy Cooperation Center, to contribute to achieve low-carbon economic development as well as green and sustainable growth.

3. The Parties agree to strengthen cooperation in the sustainable energy industries in the fields, such as wind power, hydropower, solar power, hydrogen, bio-energy, smart grid, smart energy solutions, energy storage systems, and electric vehicles, and promote trade and investment.

4. The Parties may strengthen experience sharing, communication, and cooperation in the renewable energy and carbon capture, utilisation and storage, and building more clean energy facilities that help with emission reduction.

Article 10.13: Coordinated Transformation for Digital and Green Development

1. The Parties recognise the importance of promoting energy efficiency improvement in emerging fields, deep integration of digital technology and green and low-carbon industries, and application of digital energy-saving and carbon reduction technologies.

2. The Parties may strengthen experience sharing, communication, and cooperation in the following aspects, including:

(a) promoting green and low-carbon development of digital industries such as data centres and 5G, enabling the green and digital transformation of traditional industries and micro, small and medium enterprises through digital technology, on research and development (R&D), extension of common digital and green technologies, and expansion of digital and green integration application scenarios; and

(b) applying digital, smart, and green technology in agricultural production, assembling and integrating green technologies to meet the needs of different crops and regions, bolstering digital development in agriculture including efforts to advance R&D and extension related to digital application scenarios, accelerating the use of big data in agriculture, and promoting smart agriculture.

Article 10.14: Other Areas of Cooperation

The Parties agree to strengthen cooperation in any other areas as mutually agreed by the Parties.

Section C
Implementation Mechanism

Article 10.15: Contact Points

1. Each Party shall designate contact point or contact points to facilitate communication among the Parties for the implementation of this Chapter.

2. Each Party shall notify the other Parties in writing of its designated contact point or contact points including information of their contact details no later than 60 days after the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party.

3. Each Party shall notify the other Parties of any change of its contact point or contact points or their contact details.

Article 10.16: Review

For the purposes of this Chapter, the Parties shall meet five years from the date of entry into force of the ACFTA 3.0 Upgrade Protocol for all Parties or otherwise agreed by the Parties to review this Chapter with a view to furthering and developing the objectives set out in Article 10.2 (Objectives).

Article 10.17: Non-Application of Dispute Settlement

1. The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

2. Any dispute concerning the interpretation, implementation, or application of this Chapter shall be settled amicably by the Parties.

Article 10.18: Committee on Green Economy

1. The Parties hereby establish a Committee on Green Economy consisting of representatives of the Parties, to promote and monitor the implementation and administration of this Chapter.

2. The Committee on Green Economy shall meet as mutually determined by the Parties. The meetings may be conducted in person, or by any other means as mutually determined by the Parties.

Article 10.19: Disclosure of Information

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

Article 10.20: Confidentiality

Where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such

information shall be used only for the purposes specified by the Party providing the information, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

Article 10.21: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.[1, 2]

Article 10.22: Security Exceptions

Nothing in this Chapter shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such

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[1] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[2] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

infrastructure;

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

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

CHAPTER 11

SUPPLY CHAIN CONNECTIVITY

Article 11.1: Definitions

For the purposes of this Chapter:

(a) **supply chain** means a system of resources, technologies, enterprises, activities, and relevant information[1] involved in the production and in the act of transporting goods, especially essential goods, from producer to consumer or user;

(b) **connectivity** means physical infrastructure, and ways to facilitate the movement of goods and services, especially essential goods and services, related to supply chains within and across borders;

(c) **essential goods** means goods considered by a Party as essential for disaster relief and urgent medical purposes during a humanitarian crisis or a supply chain disruption;[2]

(d) **essential services** means services directly related to the production or movement of essential goods within the supply chain;

(e) **supply chain disruption** means a severe interruption, delay, or shortage that:

(i) impacts one or more Parties; and

(ii) significantly impairs the production of, the cross-border movement of, or access to essential goods and services as determined by Parties; and

(f) **humanitarian crisis** means an event that poses, or series of events that pose, an imminent threat to or affect the health, safety or well-being of, Parties or a region, such as

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[1] For greater certainty, information does not include confidential information as determined by the providing Party.

[2] A Party may refer to guidelines issued by relevant international organisations, of which all Parties are members, when determining if a good is essential.

pandemics, epidemics, natural or human-induced disasters and may occur throughout a large land area.

Article 11.2: Objectives

Drawing from the lessons learnt from the COVID-19 pandemic, to the extent practicable, the Parties shall cooperate to strengthen the resilience and connectivity of regional supply chains, giving priority to the continued and smooth cross-border flow of essential goods and services:

(a) to keep markets open and facilitate trade in the region, as well as to continuously broaden and deepen mutually beneficial cooperation to further strengthen the ASEAN-China Comprehensive Strategic Partnership and promote supply chain connectivity;

(b) to promote and facilitate investments to diversify supply chain and strengthen connectivity;

(c) to cooperate to identify and address potential supply shortages, supply chain bottlenecks, and other similar risks and vulnerabilities in the supply chains;

(d) to reduce the impact of regional supply chain disruptions; and

(e) to take advantage of opportunities brought by digital economy and promote technology adoption by the Parties.

Article 11.3: Strengthening Supply Chains Connectivity

Keep the Market Open

1. The Parties reaffirm their commitment to market access in trade in goods under this Agreement.

2. The Parties should uphold the rules-based multilateral trading system and foster a free, fair, open inclusive, equitable, sustainable, transparent, non-discriminatory, and predictable market environment.

3. The Parties should endeavour to refrain from taking unnecessary barriers to trade in essential goods, and strengthen collaboration to support the smooth supply chain of essential goods.

Improve the Facilitation Level of Trade in Goods

4. With an aim to improve the level of trade facilitation in the region, the Parties should implement the commitments on customs procedures and trade facilitation, sanitary and phytosanitary measures, standards, technical regulations and conformity assessment procedures under this Agreement.

5. The Parties may further explore relevant measures to further improve the level of trade facilitation in this region on a voluntary basis.

Strengthen Infrastructure Connectivity

6. In order to ensure the continued and smooth cross-border flow of essential goods and services, subject to laws, regulations, and policies, the Parties are encouraged to advance cooperation in infrastructure connectivity, including multimodal transport,[3] promote sustainable port[4] development, port[4] productivity and efficiency, and address the choke points in logistics and transportation.

Enhance Technology and Innovation

7. The Parties shall endeavour to take advantage of the opportunities brought by the digital economy, encourage enterprises, especially the micro, small, and medium enterprises, to utilise digital technologies to carry out production and business activities, and promote digital solutions to enhance the resilience and connectivity of regional supply chains.

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[3] Multimodal transport refers to the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.

[4] Port refers to airport, dry port, and seaport.

Article 11.4: Responding to Supply Chain Emergencies

Non-Tariff Measures on Essential Goods during Humanitarian Crises

1. During a humanitarian crisis, nothing in this Article shall prevent a Party from exercising its rights or obligations under the WTO Agreement, or any other international agreements to which it is a party.

2. During a humanitarian crisis, which adversely impact the Parties on a substantial scale, each Party shall, to the extent possible:

   (a) facilitate timely information-sharing with regard to non-tariff measures on essential goods;

   (b) refrain from introducing trade-restricting non-tariff measures on essential goods unless necessary, and in which case such non-tariff measures must be targeted, proportionate, transparent, temporary, and in conformity with its rights and obligations under the WTO Agreement and other relevant international agreements; and

   (c) endeavour to ensure the timely notification and publication, in accordance with the WTO Agreement, of regulatory information on matters pertaining to its non-tariff measures on essential goods.

3. The ACFTA-JC shall be convened, where necessary and possible, to identify and expeditiously eliminate unnecessary non-tariff measures on trade in essential goods in an expedited and timely manner during a humanitarian crisis. A Party may request essential goods from another Party and the requested Party shall, to the extent possible, positively consider the request, subject to the requested Party's internal situation and considerations of the requested Party.

Facilitation of Essential Goods During Humanitarian Crises or Supply Chain Disruptions

4. Each Party shall, to the extent permitted by its laws, regulations, and policies, expedite and facilitate the movement, release and clearance, including transit through its exit or entry points, of all essential goods.

5. Each Party shall, to the extent permitted by its laws, regulations, and policies, expedite the release of essential goods upon arrival, including by adopting or maintaining procedures to permit the submission of import documentation and other required information, including manifests, prior to the arrival of the essential goods, so that the processing of such documentation and information to begin prior to the arrival of the essential goods.

6. Each Party shall, to the extent permitted by its laws, regulations, and policies, clear essential goods using documents received through electronic means during a humanitarian crisis or a supply chain disruption.

Article 11.5: Cooperation

1. The Parties shall, to the extent practicable:

   (a) promote cooperation in the supply chain field, such as pilot projects and initiatives, actively explore capacity building through various means such as seminars and training, and build cooperation platforms for enterprises through exhibitions and forums, so as to strengthen supply chains and help the enterprises in the region, especially the micro, small, and medium-sized enterprises, to better integrate into the regional and global supply chain;

   (b) strengthen communication and coordination on measures that may affect the supply chain, exchange and share policy information adopted to address and alleviate the humanitarian crisis in a timely manner, stabilise the supply chain in the region and reduce adverse effects;

   (c) communicate and consult in a timely manner to address related issues as soon as possible when supply chain disruption occurs in the region;

   (d) prepare for possible supply chain disruption in the region and formulate relevant recovery plans;

   (e) give positive consideration to proposals for cooperation during humanitarian crisis situations or to strengthen supply chain in the region which could include, where possible, emergency transportation of essential goods, developing appropriate mechanisms to facilitate timely

information sharing, and conducting joint actions to better anticipate and respond to supply chain disruptions;

(f) consider conduct of activities to promote investment and encourage public-private joint efforts and other business match making activities to help enterprises identify potential partners in the Parties with the aim of strengthening the resilience and connectivity of regional supply chains including the diversification of supply chains; and

(g) explore joint research and development to support the resilience and connectivity of supply chains.

2. Cooperation shall be undertaken through ways and means considered appropriate by the ACFTA-JC. The ACFTA-JC may task the Parties to meet and discuss issues and undertake cooperation related to the implementation of this Chapter. The Parties shall report the results of each meeting to the ACFTA-JC.

3. The cooperation activities under this Chapter are subject to the availability of funds and human and other resources, and to the applicable laws, regulations, and policies of the Parties.

Article 11.6: Contact Points

1. Each Party shall designate its contact point to facilitate communication between the Parties for the implementation of this Chapter.

2. Each Party shall notify the other Parties through the ASEAN Secretariat in writing of its designated contact point including information of their contact details no later than 60 days after the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party.

3. A Party shall notify the other Parties of any change of its contact point or the details of the relevant officials.

4. Each Party shall, to the extent possible, ensure that its contact point facilitates the exchange of information between the Parties on the implementation of this Chapter.

Article 11.7: Non-Application of Dispute Settlement

1. The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

2. Any dispute concerning the interpretation, implementation, or application of this Chapter shall be settled amicably by the Parties.

Article 11.8: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.[5, 6]

Article 11.9: Security Exceptions

Nothing in this Chapter shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

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[5] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[6] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

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

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

CHAPTER 12

MICRO, SMALL, AND MEDIUM ENTERPRISES

Article 12.1: Objectives

1. The Parties recognise that micro, small, and medium enterprises contribute significantly to economic growth, employment, and innovation, and therefore seek to promote information sharing and cooperation in increasing the ability of micro, small, and medium enterprises to utilise and benefit from the opportunities created by this Agreement.

2. This Chapter seeks to promote cooperation among the Parties to facilitate participation of micro, small, and medium enterprises in international trade and in addressing trade-related issues.

3. The Parties seek to create an enabling environment for micro, small, and medium enterprises to help them integrate and participate in the global market and global value chains, and improve their productivity, competitiveness, and sustainability.

4. The Parties acknowledge that various other Chapters under this Agreement also contain provisions that contribute to the objectives stated in this Article.

Article 12.2: Information Sharing

1. Each Party shall promote the sharing and exchange of information that is related to this Agreement and relevant to micro, small, and medium enterprises, including through the establishment and maintenance of a publicly accessible information platform, to share knowledge, experiences, and best practices among the Parties.

2. The information to be made publicly accessible on the platform referred to in paragraph 1 shall include:

   (a) the full text of this Agreement;

   (b) information on its trade and investment-related laws and regulations that each Party considers relevant to micro, small, and medium enterprises; and

(c) additional business-related information that each Party considers useful for micro, small, and medium enterprises interested in benefitting from the opportunities provided by this Agreement.

3. Each Party shall take reasonable steps to ensure that information referred to in paragraph 2 is accurate and up to date.

Article 12.3: Cooperation

1. The Parties shall strengthen their cooperation under this Chapter through sharing and exchanging information on best practices. Such cooperation may include:

(a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;

(b) improving micro, small, and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;

(c) promoting the use of electronic commerce by micro, small, and medium enterprises;

(d) exploring opportunities for exchanges of experiences among Parties' entrepreneurial programmes;

(e) promoting the formalisation of micro, small, and medium enterprises, including by exchanging regulatory practices on business registration;

(f) encouraging innovation and use of technology, including by supporting micro, small, and medium enterprises' digital transformation and innovative start-ups;

(g) promoting awareness, understanding, and effective use of the relevant intellectual property regimes among micro, small, and medium enterprises;

(h) promoting good regulatory practices and building capacity in formulating and implementing regulations, policies, and programmes that contribute to the development of micro, small, and medium enterprises;

(i) helping micro, small, and medium enterprises develop or improve capabilities in sustainability, and encouraging a low carbon and sustainable environment for micro, small, and medium enterprises in the region;

(j) providing information on promoting access to finance throughout micro, small, and medium enterprises' various stages of growth;

(k) supporting micro, small, and medium enterprises to capture opportunities in new and emerging areas;

(l) strengthening human resources and development capabilities of micro, small, and medium enterprises;

(m) enhancing the capability and competitiveness of micro, small, and medium enterprises including through innovation and specialisation; and

(n) enhancing micro, small, and medium enterprises' knowledge of, and capacity to utilise, free trade agreements.

2. Cooperation activities undertaken under this Chapter are subject to the availability of resources and the terms and conditions as may be agreed between the Parties.

Article 12.4: Contact Points

Each Party shall, within 30 days of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for that Party, notify the other Parties of its contact point for this Chapter. Each Party shall promptly notify the other Parties of any change to the contact point.

Article 12.5: Committee on Micro, Small, and Medium Enterprises

1. The Parties hereby establish a Committee on Micro, Small, and Medium Enterprises, consisting of government officials of the Parties.

2. The functions of the Committee on Micro, Small, and Medium Enterprises shall be to:

(a) identify ways to assist micro, small, and medium enterprises to take advantage of the commercial opportunities under this Agreement. This may include sharing and exchanging information on seminars, workshops, fairs or other activities and platforms, such as export counseling, undertaken by the Parties to inform micro, small, and medium enterprises of the benefits available to them under this Agreement;

(b) consider any other matters pertaining to micro, small, and medium enterprises as appropriate and as may be agreed by Parties, including any issues raised by micro, small, and medium enterprises regarding their ability to benefit from this Agreement;

(c) report to the ACFTA-JC as required and make recommendations as appropriate; and

(d) shall endeavour to carry out cooperation on the matters listed in Article 12.3 (Cooperation) and in other areas as may be agreed by the Parties.

3. The Parties shall coordinate the Committee on Micro, Small, and Medium Enterprises' work programme with other relevant bodies established under this Agreement and shall submit a report of any activities undertaken to the ACFTA-JC as appropriate.

4. The Committee on Micro, Small, and Medium Enterprises may collaborate with appropriate experts, international organisations and the private sector in carrying out its programmes and activities, including consultation and dialogue with micro, small, and medium enterprises as may be agreed by the Parties.

5. The Committee on Micro, Small, and Medium Enterprises shall meet within one year of the date of entry into force of the ACFTA 3.0 Upgrade Protocol for all Parties, and thereafter as may be determined by the Parties.

Article 12.6: Non-Application of Dispute Settlement

1. The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

2. Any dispute concerning the interpretation, implementation, or application of this Chapter shall be settled amicably by the Parties.

Article 12.7: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.[1, 2]

Article 12.8: Security Exceptions

Nothing in this Chapter shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

(iv) action taken in time of war or other emergency in

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[1] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[2] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

domestic or international relations; or

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

CHAPTER 13

ECONOMIC AND TECHNICAL COOPERATION

Article 13.1: Replacement

This Chapter shall replace Article 7 of the Framework Agreement.

Article 13.2: Definition

Least Developed Country or **LDC** means any country designated as such by the United Nations and which has not obtained graduation from the least developed country category.

Article 13.3: Principles and Objectives

1. The Parties shall undertake economic and technical cooperation activities of mutual benefit to deepen trade and investment among the Parties with a view to promoting economic cooperation pursuant to this Agreement.

2. The Parties shall, subject to the availability of resources and in accordance with their respective laws and regulations, endeavour to facilitate economic and technical cooperation among the Parties. The Parties shall explore ways to expand economic and technical cooperation in areas of mutual interest, including recommendations to enhance existing economic and technical cooperation as well as to develop new initiatives.

3. The Parties shall implement capacity-building programmes and technical assistance, particularly projects that address the specific needs and requirements consistent with the priority areas of economic and technical cooperation under this Agreement. Special consideration shall be provided to Least Developed Country members of ASEAN with regard to their participation in these projects and their proposed projects.

Article 13.4: Scope of Economic and Technical Cooperation

1. Economic and technical cooperation under this Chapter shall support the inclusive, effective, and efficient implementation and

utilisation of this Agreement through economic and technical cooperation activities which are trade or investment related.

2. The Parties shall explore and undertake economic and technical cooperation activities, including capacity building and technical assistance that focus on the following:

   (a) Trade in Goods;

   (b) Rules of Origin;

   (c) Customs Procedures and Trade Facilitations;

   (d) Sanitary and Phytosanitary Measures;

   (e) Standards, Technical Regulations and Conformity Assessment Procedures;

   (f) Trade in Services;

   (g) Investment;

   (h) Digital Economy;

   (i) Green Economy;

   (j) Supply Chain Connectivity;

   (k) Competition;

   (l) Consumer Protection;

   (m) Micro, Small, and Medium Enterprises;

   (n) Intellectual Property Rights; and

   (o) Other areas related to economic and technical cooperation as may be mutually agreed upon by the Parties.

3. The Parties shall focus on the economic and technical cooperation to support other committees under the ACFTA-JC for better utilisation of this Agreement.

Article 13.5: Resources for Economic and Technical Cooperation Activities

The Parties shall source the funding for economic and technical cooperation activities under this Chapter from existing appropriate ASEAN-China resources, or other resources that may become available in the future.

Article 13.6: LDC Parties

The Parties shall take into consideration specific constraints faced by an LDC Party. Appropriate capacity building and technical assistance, as agreed upon by China and the LDC Party seeking such assistance, shall be provided to help the LDC Party implement their obligations under, address their specific concerns relating to, and take advantage of the benefits of, this Agreement.

Article 13.7: Implementation of Economic and Technical Cooperation Activities

1. Economic and technical cooperation activities undertaken pursuant to this Chapter may include seminars, trainings, policy dialogues, studies, and other activities agreed upon by the Parties.

2. The Parties shall enhance economic and technical cooperation activities under this Chapter by expediting the appraisal and approval process, developing clear guidelines and facilitating enquiries on economic and technical cooperation projects with a view to helping prospective project proponents to better utilise the available resources.

3. Economic and technical cooperation activities shall involve China and at least two ASEAN Member States, provided that those activities are regional in nature and of mutual benefit to those ASEAN Member States and China.

4. The Parties shall undertake economic and technical cooperation activities at a mutually agreed time.

Article 13.8: Committee on Economic and Technical Cooperation

1. The Committee on Economic and Technical Cooperation ("Ecotech Committee") shall be responsible for the effective implementation and operation of this Chapter. Each Party shall designate its representative to the Ecotech Committee and shall keep all other Parties updated on its focal point's details.

2. The Ecotech Committee shall monitor the implementation and operation of this Chapter and the application and fulfilment of its objective. It shall report the implementation of new and existing economic and technical cooperation activities under this Chapter to the ACFTA-JC and make recommendations on the economic and technical cooperation activities to be undertaken in accordance with the priorities of the relevant Parties, where appropriate.

3. The Ecotech Committee shall be:

   (a) composed of representatives of China and ASEAN Member States; and

   (b) co-chaired by an official of the Government of China and an official of one of the Governments of ASEAN Member States.

Article 13.9: Non-Application of Dispute Settlement

1. The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

2. Any dispute concerning the interpretation, implementation, or application of this Chapter shall be settled amicably by the Parties.

Article 13.10: Disclosure of Information

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

Article 13.11: Confidentiality

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

Article 13.12: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.[1, 2]

Article 13.13: Security Exceptions

Nothing in this Chapter shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

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

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

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[1] The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[2] The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

(iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

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

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

CHAPTER 14

DISPUTE SETTLEMENT

Article 14.1: Reaffirmation

The Parties reaffirm their commitments under the Agreement on Dispute Settlement Mechanism.