TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM AND THE GOVERNMENT OF THE REPUBLIC OF CUBA

PREAMBLE

The Government of the Socialist Republic of Viet Nam ("Viet Nam") and the Government of the Republic of Cuba ("Cuba"), hereinafter referred collectively to as the "Parties" and individually as a "Party":

Considering the strong historical bonds of friendship and cooperation between the peoples of the two nations and the accelerating development of reciprocal trade and other economic links;

Expressing a common will to consolidate, broaden and deepen bilateral economic and trade relations with a medium- and long-term vision, and to intensify cooperation actions to achieve greater mutual benefits in economic and social development of both countries;

Recognising the importance of promoting the growing and balanced trade, dynamically, between the Parties, taking into account their respective levels of economic development, by establishing concessions to strengthen and streamline trade flows and more qualitative diversification of trade; and

Recalling that both Parties are Members of the World Trade Organization ("WTO") and reaffirming that this Agreement shall have no impacts on the rights and obligations of each Party in accordance with the agreements and other documents which are relevant to or signed under the auspices of the WTO;

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

Article 1.1: Objectives

The objectives of this Agreement are to consolidate, expand and intensify the trade relationship between the two countries, by:

a) facilitating, expanding, diversifying and promoting bilateral trade in goods;

b) strengthening trade exchanges and economic cooperation; and

c) implementing measures and developing appropriate actions to empower the integration process.

Article 1.2: Principles

1. This Agreement creates the legal framework for trade relations between the two countries in accordance with the respective laws, regulations and policies of each country based on the principles of equality, mutual benefit and further promotion of the special Viet Nam - Cuba friendship and solidarity.

2. With this Agreement, the Parties are committed to extending special preferential treatment of trade in goods to each other.

Article 1.3: Transparency

1. Each Party shall ensure, in accordance with its respective laws and regulations, that its laws and regulations of general application as well as their respective international agreements, with respect to any matter covered by this Agreement, are promptly published or otherwise made publicly available, including wherever possible in electronic form.

2. To the extent possible, in accordance with its respective laws and regulations, each Party shall:

a) publish in advance such laws and regulations referred to in paragraph 1 that it proposes to adopt; and

b) provide interested persons and the other Party with a reasonable opportunity to comment on such proposed laws and regulations referred to in paragraph 1.

3. Upon request of a Party, the other Party shall promptly respond to specific questions and provide information on laws and regulations referred to in paragraphs 1 and 2.

Article 1.4: Relation to Other Agreements

The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are party.

CHAPTER 2
TRADE IN GOODS

Article 2.1: Definitions

For the purposes of this Chapter:

Agreement on Agriculture means the *Agreement on Agriculture* in Annex 1A to the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994 ("WTO Agreement");

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture;

agricultural export subsidies shall have the meaning assigned to the term of "export subsidies" in Article 1(e) of the Agreement on Agriculture, including any amendment to that Article;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

customs duties means duties imposed in connection with the importation of a good provided that such customs duties shall not include:

a) charges equivalent to internal taxes, including excise duties, sales tax, and goods and services taxes imposed in accordance with a Party's commitments under paragraph 2 of Article III of the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement ("GATT 1994");

b) anti-dumping or countervailing duty or safeguards duty applied in accordance with Chapter 5 (Trade Remedies); or

c) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

performance requirement means a requirement that:

a) a given level or percentage of goods be exported;

b) goods of the Party granting an import licence be substituted for imported goods;

c) a person benefiting from an import licence purchase other goods or services in the territory of the Party granting the import licence, or accord a preference to domestically produced goods;

d) a person benefiting from an import licence produce goods or supply services, in the territory of the Party granting the import licence, with a given level or percentage of domestic content; or

e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows.

Article 2.2: Scope and Coverage

Except as otherwise provided, this Chapter shall apply to trade in goods of a Party.

Article 2.3: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end, Article III of GATT 1994 and its interpretative notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The provisions of paragraph 1 regarding national treatment shall also apply to all laws, regulations and other measures, including those of local government at the sub-national level.

Article 2.4: Reduction and/or Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided for in this Agreement, each Party shall progressively reduce and/or eliminate its customs duties on originating goods in accordance with its Schedule of tariff commitments in Annex 2-B (Reduction and/or Elimination of Customs Duties).

3. On the request of either Party, the Parties shall consult to consider accelerating the reduction and/or elimination of customs duties set out in their Schedules in Annex 2-B (Reduction and/or Elimination of Customs Duties). An agreement between the Parties to accelerate the reduction and/or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules in Annex 2-B (Reduction and/or Elimination of Customs Duties) for such good.

4. A Party may at any time unilaterally accelerate the reduction and/or elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 2-B

(Reduction and/or Elimination of Customs Duties). Such Party shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

Article 2.5: Import and Export Restrictions

1. Except as otherwise provided for in this Agreement, neither Party may adopt or maintain any non-tariff measure, including prohibition or restriction on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

2. The Parties understand that the rights and obligations in paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

a) import licensing conditioned on the fulfillment of a performance requirement; or

b) voluntary export restraints.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A (Exceptions to Elimination of Import and Export Restrictions).

4. Each Party shall ensure the transparency of any non-tariff measure permitted in paragraph 1 and shall ensure that any such measure is not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 2.6: Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import licensing measures are implemented in a transparent and predictable manner, and applied in accordance with the *Agreement on Import Licensing Procedures* in Annex 1A to the WTO Agreement ("Agreement on Import Licensing Procedures").

2. Each Party shall promptly notify the other Party of existing import licensing procedures. Thereafter, each Party shall notify the other Party of any new import licensing procedure and any modification to its existing import licensing procedures, to the extent possible 60 days before it takes effect, but in any case no later than 60 days of publication. The information in any notification under this Article shall be in accordance with Article 5.2 and Article 5.3 of the Agreement on Import Licensing Procedures.

3. Upon request of the other Party, a Party shall, promptly and to the extent possible, respond to that request for information on import licensing requirements of general application.

Article 2.7: Administrative Fees and Formalities

1. The Parties agree that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods shall be consistent with their obligations under

GATT 1994.

2. A Party shall not require consular transactions, including related fees and charges, in connection with any good imported from the other Party.

3. No Party shall levy fees and charges on or in connection with importation or exportation on an *ad valorem* basis.

4. Each Party shall make available through the internet a current list of the fees and charges it imposes in connection with importation or exportation.

Article 2.8: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods, reaffirm their WTO commitments and shall work towards an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. In accordance with their WTO obligations, neither Party shall introduce or maintain any export subsidies on any agricultural goods destined for the territory of the other Party.

Article 2.9: Administration of Trade Regulations

In accordance with Article X of GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to:

a) the classification or the valuation of goods for customs purposes;

b) rates of duty, taxes or other charges;

c) requirements, restrictions or prohibitions on imports or exports;

d) the transfer of payments; and

e) issues affecting sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of goods for customs purposes.

Article 2.10: Contact Points and Consultations

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

2. Where a Party considers that any proposed or actual measure of the other Party may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party shall promptly respond to such requests for information and consultations.

Article 2.11: Application

Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by the regional and local governments and authorities within its territories.

ANNEX 2-A
EXCEPTIONS TO ELIMINATION OF IMPORT AND EXPORT RESTRICTIONS

Paragraphs 1 and 2 of Article 2.5 (Import and Export Restrictions) shall not apply to:

a) with respect to Cuba, import restrictive measures notified to the WTO pursuant to the *Decision on Notification Procedures for Quantitative Restrictions (G/L/59/REV.1). Document G/MA/QR/N/CUB/2* and subsequent documents.

b) with respect to Viet Nam, restrictive measures listed by Viet Nam in the *Protocol on the Accession of the Socialist Republic of Viet Nam* to the WTO.

ANNEX 2-B
REDUCTION AND/OR ELIMINATION OF CUSTOMS DUTIES

Section A
General Notes

1. The tariff schedule in this Annex contains the following columns:

a) **HS 2012**: the code used in the nomenclature of the Harmonized System (HS) 2012;

b) **Description**: description of the product falling under the heading;

c) **Base Rate**: the basic customs duty from which the tariff reduction and/or elimination program starts;

d) **Category**: the category under which the product concerned falls for the purposes of tariff reduction and/or elimination; and

e) **Year(s):**

For Viet Nam, **Y1** means the year of entry into force of this Agreement as provided for in Article 14.3 (Entry into Force and Termination). **Y2**, **Y3**, **Y4** and subsequent years mean the years which annual stage reductions shall take effect.

For Cuba, Year **1** means the year of entry into force of this Agreement as provided for in Article 14.3 (Entry into Force and Termination). Year **2**, Year **3**, Year **4**, Year **5** and subsequent years mean the years which annual stage reductions shall take effect.

2. For the purposes of implementing annual installments, the following shall apply:

a) The first reduction shall take place on the date of entry into force of this Agreement; and

b) The subsequent reductions shall take place on January 1 of each following year.

3. For the purposes of implementing annual installments, the Parties shall ensure that the transposition of HS code shall not affect the value of tariff concessions under this Annex.

Section B
Notes for Schedule of Cuba

1. The categories which are applicable to originating goods imported into Cuba from Viet Nam are the following:

a) **"EIF"**: Customs duties shall be eliminated entirely and such goods shall be duty-free on the date of entry into force of this Agreement; and

b) **"B":** Customs duties shall be eliminated and/or reduced from the base rate beginning on the date of entry into force of this Agreement within five years.

Section C
Schedule of Cuba

Section D
Notes for Schedule of Viet Nam

1. The categories which are applicable to originating goods imported into Viet Nam from Cuba are the following:

a) **"EIF"**: Customs duties shall be eliminated entirely and such goods shall be duty-free on the date of entry into force of this Agreement;

b) **"P5":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 5 per cent from the first day of the fourth year;

c) **"P15":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 15 per cent from the first day of the fourth year;

d) **"P20":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 20 per cent from the first day of the fourth year;

e) **"P40":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 40 per cent from the first day of the fourth year;

f) **"P45":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 45 per cent from the first day of the fourth year;

g) **"P50":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 50 per cent from the first day of the fourth year;

h) **"P70":** Customs duties shall be reduced from the base rate beginning on the date of entry into force of this Agreement to 70 per cent from the first day of the fourth year; and

i) **"Base rate":** Standstill the base rate as from the date of entry into force of this Agreement.

Section E
Schedule of Viet Nam

CHAPTER 3
RULES OF ORIGIN

Section A
Origin Criteria

Article 3.1: Scope of Application

This Chapter sets out the rules of origin applicable to the exchange of products between the Parties for the purposes of:

a) qualification and determination of originating products;

b) certification of origin and issuance of certificates of origin;

c) processes for verification of origin; and

d) penalties.

The Parties shall implement this Chapter in order to apply preferential tariff treatment as provided for in this Agreement.

Article 3.2: Definitions

For the purposes of this Chapter:

change in tariff heading means all non-originating materials used in the production of goods that have undergone a change in tariff classification at the four-digit level;

chapters, headings and subheadings means the chapters (two-digit code), headings (four-digit code) and subheadings (six-digit code) used in the nomenclature which constitutes the Harmonized System;

CIF value means the value of the imported good, and includes the cost of insurance and freight up to the port or place of entry into the country of importation;

classification means the sorting of a product by reference to a specific item in the nomenclature which constitutes the Harmonized System;

competent authority means the authority of each Party responsible for the management and supervision of the provisions of this Chapter:

a) in the case of Cuba, the Ministry of Foreign Trade and Investment and the Ministry of Finance and Prices acting together; and

b) in the case of Viet Nam, the Ministry of Industry and Trade;

customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

a) in the case of Cuba, the General Customs Office; and

b) in the case of Viet Nam, the General Department of Viet Nam Customs;

days means working days, excluding Saturdays, Sundays and holidays;

FOB value means the free-on-board value of the good, inclusive of transport costs to the port or site of final shipment abroad;

fungible materials means materials that are interchangeable for commercial purposes and whose properties are basically identical, and which cannot be distinguished by mere visual examination;

goods means materials or products, which can be wholly obtained or produced, even if they are intended for later use as materials in another production process;

Harmonized System means the Harmonized Commodity Description and Coding System in force, including its General Rules of Interpretation, Section Notes, Chapter Notes, Heading and Subheading Notes as adopted and implemented by the Parties in their respective laws and regulations;

heading means the first four digits in the tariff classification of the Harmonized System;

intermediate material means a material that is produced by the producer of a good and used in the production thereof, and acquires features that enable it to be marketed independently of the final good;

material means raw materials, supplies, intermediate materials and components used in the manufacture of goods;

packing materials and containers for shipment means goods used to protect a good during its transportation, but does not include packaging materials or containers in which a good is packaged for retail sale;

production means methods of obtaining goods, including but not limited to the cultivation, breeding, raising, mining, harvesting, fishing, hunting, capturing, aquaculture, gathering, manufacturing, processing, assembly or disassembly of goods;

qualified entity means public or private bodies recognised by the competent authority for issuing certificates of origin:

a) in the case of Cuba, the Chamber of Commerce; and

b) in the case of Viet Nam, authorised issuing authorities;

sets means sets of products used for a particular purpose, prepared for retail sale and classified pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System;

territory means:

a) in the case of Cuba, the entire sea and land area subject to its sovereignty and jurisdiction in accordance with their domestic law and international law; and

b) in the case of Viet Nam, land and sea territories, in accordance with its domestic law and international law;

verification report means the written document issued by the customs authority or institution licensed as appropriate, which is the result of a procedure that verifies whether a good qualifies as originating under this Chapter.

Article 3.3: Originating Goods

The following goods shall be considered as originating if they are:

a) wholly obtained or produced entirely in the territory of either Party, namely:

(i) minerals extracted in the territory of either Party;

(ii) vegetable products harvested, picked or gathered in the territory of either Party;

(iii) live animals born and raised in the territory of either Party;

(iv) goods obtained from hunting, trapping, harvesting, aquaculture or fishing in the territory of either Party;

(v) fish, shellfish and other marine life taken from the sea outside the territory of the Parties by vessels owned or leased by a company established in the territory of a Party, provided that such vessels are registered or recorded with that Party and entitled to fly its flag;

(vi) goods obtained or produced from fish, shellfish and other marine species on board factory vessels, provided that they are owned or leased by a company established in the territory of a Party and such vessels are registered with that Party and entitled to fly its flag;

(vii) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside the territorial sea of that Party, provided that the Party or person of the Party has rights to exploit such seabed and beneath the seabed;

(viii) waste and scrap derived from production or collected in the territory of either Party, provided that such goods are used as starting materials; and

(ix) goods produced in the territory of either Party exclusively from goods referred to in subparagraphs (i) to (viii) or from their derivatives, at any stage of production;

b) produced entirely in the territory of either Party, exclusively from materials that qualify as originating under this Chapter;

c) produced using non-originating materials, provided that they have undergone a production process conducted entirely in the territory of a Party, and that goods are classified under a different tariff heading compared to these materials' tariff heading;

d) unable to comply with the provisions of the preceding paragraph because the production process does not involve a change in tariff heading for all non-originating materials, however the regional value content (RVC) of the good (Viet Nam and Cuba content) is not less than X per cent of the FOB export value of the final goods; and

e) produced entirely in the territory of a Party using non-originating materials provided that the goods meet the specific requirements set out in Annex 3-A (Product Specific Rules) to this Chapter. These requirements shall prevail over general criteria set out in paragraphs c) and d).

Article 3.4: Accumulation

1. For the purposes of compliance with the rules of origin, materials originating in the territory of either Party, embodied in a particular commodity in the territory of the exporting Party, shall be considered as originating in the territory of the latter.

2. When each Party has a trade agreement in force with the same country which is not party to this Agreement, by a decision of the Joint Committee, the materials of the non-Party may be considered as originating goods under this Agreement.

3. Paragraph 2 may only be applied once the mechanism/procedure and material which are subject to accumulate have been determined by agreement of the Parties. The Parties shall endeavour to implement accumulation scheme and shall establish a working group that develops this provision in the future.

Article 3.5: *De Minimis*

A good shall be considered as originating if the CIF value of all non-originating materials used in its production not satisfying a change in tariff classification requirement does not exceed 10 per cent of the FOB value of the good.

Article 3.6: Treatment of Intermediate Materials

For the purposes of determining the origin of goods, for the cases specified in paragraph d) of Article 3.3 (Originating Goods), the producer may consider the total value of the intermediate goods used in the production of such goods as originating, provided that they qualify as such in accordance with the provisions of this Chapter.

Article 3.7: Processes or Operations which do not Confer Origin

1. Processes or operations described below shall be considered as insufficient working or processing to confer the status of originating products:

a) ensuring preservation of goods in good condition for the purposes of transport or storage;

b) facilitating shipment or transport; and

c) packaging or presenting goods for sale.

2. A good originating in the territory of a Party shall retain its initial originating status, when exported from the other Party, where operations undertaken have not undergone operations beyond those referred to in paragraph 1.

Article 3.8: Accessories, Spare Parts and Tools

1. Accessories, spare parts and tools that are delivered with the good shall be considered as part of that good if they are not invoiced separately from the good and their value is customary for that good. They shall not be taken into account in determining whether all non-originating materials used in the production of the good have undergone the applicable change in tariff classification.

2. If a good is subject to regional value content requirement, the value of the accessories, spare parts or tools described in paragraph 1, shall be taken into account as originating or non-originating materials, as appropriate, in calculating the regional value content of the good.

Article 3.9: Sets of Goods

The sets, as defined in Rule 3 of the General Rules for the Interpretation of Harmonized System, as well as goods whose description in the Harmonized System is of a set shall be considered as originating when all component goods are originating goods. However, when a set is composed of originating and non-originating goods, that set shall be considered as originating as a whole if the CIF value of non-originating goods does not exceed 15 per cent of the FOB value of the set.

Article 3.10: Packaging and Packing Materials for Retail Sale

1. If a good is subject to the RVC-based rule of origin, the value of the packaging and packing materials for retail sale shall be taken into account in its origin assessment, where the packaging and packing materials for retail sale are considered to be forming a whole with the good.

2. Where paragraph 1 is not applicable, the packaging and packing materials for retail sale, when classified together with the packaged good, shall not be considered in determining whether all of the non-originating materials used in the production of a good have met the change in tariff classification requirements for such good.

Article 3.11: Packing Materials and Containers for Shipment

Packing materials and containers for shipment are not taken into account in determining whether a good is originating.

Article 3.12: Neutral Elements and Indirect Materials Used in Production

In order to determine whether goods originate, it shall not be necessary to determine the origin of the following which might be used in the production of such goods:

a) fuel and energy;

b) tools, dies and molds;

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

d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

e) gloves, glasses, footwear, clothing, safety equipment and supplies;

f) equipment, devices and supplies used for testing or inspecting the goods;

g) catalysts and solvents; and

h) any other materials that are not incorporated or intended to be incorporated in the final composition of the goods and can be demonstrated as part of the production process.

Article 3.13: Fungible Materials

1. The determination of whether fungible materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Party.

2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

Article 3.14: Direct Consignment

1. An originating good shall be deemed as directly consigned from the exporting Party to the importing Party:

a) if the goods are transported without passing through the territory of any non-Party; or

b) if the goods are transported for the purpose of transit through a non-Party with or without transshipment or temporary storage in that non-Party, provided that:

(i) the transit is justified for geographical reasons, logistics or transport requirements;

(ii) the goods have not entered into trade or consumption in the territory of that non-Party; and

(iii) the goods have not undergone any operation in the territory of that non-Party other than unloading, reloading and splitting of consignment or any operation required to keep the goods in good condition.

2. In the case where an originating good of the exporting Party is imported through one or more non-Parties or after an exhibition in a non-Party, the customs authority of the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit supporting documentation such as transport, customs documents or other documents.

Article 3.15: Bonded Warehouses

1. Goods that have a Certificate of Origin, and during transport remain in a bonded warehouse in a third country shall be considered to maintain their origin as indicated in the Certificate of Origin provided that they are not subject to any manipulations other than those designed for storage, preservation, split of consignment for later shipment to either Party and remain under customs control.

2. To this end, the customs authority of the importing Party may request a document certifying that the goods have not undergone any transformation.

Article 3.16: Exhibitions

Originating goods sent from a Party to a third country for exhibition or display and sold after or during the exhibition for importation by the other Party, benefit from the provisions of the Agreement, subject to the fulfillment of all proven requirements of this Chapter and be accompanied by supporting customs documentation of demonstration or display at the exhibition.

Section B
Procedures for the Issuance and Verification of Origin of Goods

Article 3.17: Certificates of Origin

1. Certificates of Origin are the only documents certifying that the goods fulfill the origin requirements of this Chapter and therefore can claim preferential tariff treatment under this Agreement.

2. The certificates referred to in paragraph 1 shall be issued in the format set out in Annex 3-B (Certificate of Origin (Form VN-CU)). One certificate covers the goods under one consignment.

Article 3.18: Issuance of a Certificate of Origin

1. The exporter applying for the issuance of a certificate of origin shall be prepared to submit at any time, at the request of the competent authority or entities authorised in the exporting Party, all appropriate documents proving the originating status and compliance with other requirements of this Chapter.

2. The Parties shall enforce the qualified entity to issue certificates of origin. Signatures of authorised officers for this purpose, are duly registered, subject to the modifications which are required to notify each Party, according to the procedures set by both Parties.

Article 3.19: Validity of a Certificate of Origin

1. The Certificate of Origin shall be issued within three days of the exportation in accordance with the provisions of Article 3.17 (Certificates of Origin) and Article 3.18 (Issuance of a Certificate of Origin) and shall have a validity of one year from the date of issuance. This certificate shall be void if it is not properly filled in all fields.

2. The Certificate of Origin shall bear the name, signature and seal of qualified entities.

3. Certificates of Origin may not be issued prior to the date of the concerned commercial invoice, but at the same time or after such commercial invoice is issued.

4. The Parties shall endeavour to implement a system of certification and verification of origin electronically. When implementing the system of certification and verification of electronic Certificate of Origin (eC/O), the Parties shall recognise valid electronic signatures.

5. For the purposes of verifying the Certificates of Origin, the Parties shall make their best efforts to establish websites on information of Certificates of Origin issued by the exporting Party.

Article 3.20: Application for a Certificate of Origin

The application for a Certificate of Origin must be preceded by an application form of the producer or exporter, which manifests full compliance with the provisions of this Chapter.

Article 3.21: Preservation of Proof of Origin and Supporting Documents

1. For the purposes of origin verification laid down in Article 3.25 (Verification of Origin and Granting Preferential Tariff Treatment), the application for a Certificate of Origin and all documents related to such application shall be kept by the qualified entity and exporters and producers for at least five years from the date of issuance of the Certificate of Origin in accordance with each Party's domestic laws and regulations.

2. Information concerning the validity of the Certificate of Origin shall be provided by the qualified entity at the request of the importing Party.

3. All records identified in paragraphs 1 and 2 may be kept in paper or electronic form, in accordance with the domestic laws and regulations of each Party.

Article 3.22: Non-Party Invoicing

When an originating good is invoiced by a person registered in a non-Party, the Certificate of Origin must indicate "Non-Party Invoicing" in the Certificate of Origin.

Article 3.23: Correction of a Certificate of Origin

Neither erasures nor superimpositions shall be allowed on a Certificate of Origin. Any alteration shall be made:

a) by striking out the erroneous data and making any addition required. Such alterations shall be approved by an official authorised to sign the Certificate of Origin and certified by the qualified entity. Unused spaces shall be crossed out to prevent any subsequent addition; or

b) through the issuance of a new Certificate of Origin to replace the erroneous Certificate of Origin. The new Certificate of Origin must bear the reference number and date of issuance of the original Certificate of Origin. The new Certificate of Origin shall indicate: "replaces C/O No ... date of issue ...". The new Certificate of Origin shall be valid from the date of issuance of the original Certificate of Origin.

Article 3.24: Issuance of a Duplicate Certificate of Origin

In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply to the qualified entity for a certified duplicate to be made on the basis of the export documents. A certified duplicate shall bear the words "CERTIFIED TRUE COPY". The duplicate certificate of origin shall bear the date of issue of the original certificate and be valid one year from that date.

Article 3.25: Verification of Origin and Granting Preferential Tariff Treatment

1. Notwithstanding the presentation of the certificate of origin under the conditions set by this Chapter, the customs authority of the importing Party may, in order to verify the origin of the goods, request information from the competent authority of the exporting Party. The customs authority of the importing Party may deny preferential tariff treatment if the customs authority of the importing Party receives no confirmation of receipt of the request within a maximum of 90 days after the initial request. The exporting Party shall respond to the request for information within 180 days from the date of confirmation of receipt of the request.

2. For the purposes of paragraph 1, requests for information shall indicate:

a) the identification, name and title of the authority requesting information;

b) the reference number and the date of certificates of origin or the quantity of the certificates of origin that have been issued to an exporter during a certain time period;

c) brief description of the type of problem encountered; and

d) reasons for the request.

3. If the information obtained from the procedure referred to in paragraphs 1 and 2 is not sufficient to determine the origin of the goods covered by one or more certificates of origin, the custom authority of the importing Party, through the competent authority of the exporting Party, may make:

a) written requests for information from the exporter or producer;

b) written questionnaires to an importer, exporter or producer;

c) visits to the premises of the exporter or producer in the territory of the exporting Party, for the purposes of examining the supporting documents or observing the facilities used in the production of the goods subject to verification, in cases where the information obtained as a result of procedures referred to in subparagraphs a) and b) above are not sufficient; and

d) other procedures as the Parties may agree.

4. The customs authority of the importing Party shall notify the initiation of the verification procedure to the importer, exporter or producer and the competent authority of the exporting Party in accordance with paragraph 3. The notification shall be sent by mail or any other means followed by a confirmation of receipt of the notification.

5. In accordance with subparagraphs 3 a) and b), requests for information or written questionnaires shall contain:

a) the identification, name and title of the customs authority requesting information;

b) the name of the importer, exporter or producer under the verification request;

c) description of the infomation and documents required; and

d) reasons for verification requests or questionnaires.

6. The importer, exporter or producer who receives a questionnaire or verification request in accordance with subparagraphs 3 a) and b) shall duly complete and return the questionnaire or respond to the request for information within 45 days of the date of its receipt.

7. Pursuant to subparagraph 3c) the notice of the intention to conduct the verification visit of origin shall contain:

a) the identification of the customs authority requesting verification;

b) the name of the exporter or producer to be visited;

c) a proposed date and place of the verification visit in accordance with paragraph 8;

d) the purpose and scope of the proposed verification visit, with specific mention of the goods subject to verification;

e) the names and titles of the officials performing the verification visit; and

f) the reasons for the verification visit.

8. The competent authority from the exporting Party shall respond to the customs authority of the importing Party about its decision on the verification visit within a maximum period of 30 days from the date of receipt of the request. The verification visit may take place 60 days after the confirmation of the approval for the verification visit.

9. The exporter or producer may request, in writing, to the competent authority of the exporting Party and the importing Party to postpone the agreed verification visit with justifications for a period not exceeding 30 days from the date previously agreed or a longer period as agreed by the customs authorities of the importing Party and the exporting Party. For these purposes, the customs authority of the importing Party must notify the new date of the visit to the exporter or producer of the goods.

10. When the verification visit is completed, the customs authority of the importing Party shall prepare a record of the visit, which includes the facts and outcomes of the visit and is duly signed by the competent authorities and the exporter or producer.

11. The verification process is considered complete when the customs authority of the importing Party established by a report of origin, in a period not exceeding 30 days after receipt

of the information or the completion of the visit, that the good qualifies as originating in accordance with the procedures set out in this Article.

12. The verification report shall include facts, findings and the legal basis of the visit and inform the importer, exporter or producer whether the concerned goods are originating or not.

13. The goods subject to verification shall receive preferential tariff treatment provided that:

a) the period set out in paragraph 11 expires without a verification report prepared by the customs authority of the importing Party; or

b) the importing Party do not follow deadlines set out in this Article.

14. Where the customs authority of the importing Party has a reasonable doubt about the origin of the goods of a certain consignment, such customs authority may suspend the application for the preferential tariff treatment. The goods of that consignment can be released in accordance with the requirements of such Party's respective domestic laws and regulations. A Party that has made findings on reasonable doubt shall notify and consult with the other Party with a view to achieving a mutually acceptable solution to ensure fiscal interest.

Article 3.26: Denial of Request for Preferential Tariff Treatment

A Party may deny preferential tariff treatment to an imported good, if it fails to comply with the requirements and deadlines set out in this Chapter.

Article 3.27: Penalties

1. Each Party shall provide for civil or administrative penalties for the violation of the provisions of this Chapter in its respective laws and regulations.

2. When an exporter repeatedly provides false information or documentation, the qualified entity may temporarily suspend the issuance of new certificates of origin for that exporter.

Article 3.28: Obligations Regarding Exporters

1. When an exporter has reasons to believe that a certificate of origin contains incorrect information, it shall immediately notify in writing to the qualified entity any changes that may affect the accuracy or validity of that certificate.

2. No Party shall impose penalties on an exporter for providing incorrect information if they have voluntarily communicated in writing to the qualified entity, before the customs authority of the importing Party grants preferential tariff treatment or initiates verification visit.

Article 3.29: Obligations Regarding Importers

The customs authority of each Party shall require an importer claiming preferential tariff treatment for a good to:

a) declare in writing in the importation document required by its legislation, based on a certificate of origin, that a good qualifies as an originating good;

b) submit a valid Certificate of Origin at the time the declaration referred to in subparagraph a) is made, if established by its national legislation; and

c) submit immediately a corrected declaration and pay the corresponding customs duty when the importer has reasons to believe that the Certificate of Origin on which the customs declaration is based contains incorrect information.

Article 3.30: Return of Tariffs

If an originating good is imported into the territory of a Party without preferential tariff treatment at the time of import, the importer of the good may, according to that Party's domestic legislation, apply for a refund of any exceed duty paid to the customs authority of the importing Party as the good has not been granted preferential tariff treatment, on presentation of:

a) a written declaration that the good qualifies as originating at the time of importation;

b) a Certificate of Origin; and

c) any other documentation relating to the importation of the good that the importing Party may request.

Article 3.31: Minor Discrepancies

1. The customs authority of the importing Party shall not consider minor errors, such as slight discrepancies or omissions, typographical errors and information which falls outside the designated box, provided that these minor errors do not affect the authenticity of the Certificate of Origin, the accuracy of the information included in the Certificate of Origin or do not jeopardise the originating status of the goods to which the certificate relates.

2. For multiple goods declared under the same Certificate of Origin, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining goods listed in the Certificate of Origin.

Article 3.32: Mutual Assistance

1. The competent authorities shall, in order to ensure the implementation of the provisions of this Chapter, assist each other through the corresponding authorities to verify the authenticity of the certificates of origin and the information provided in the certificates of origin.

2. The Parties shall consult regularly to ensure that this Chapter is administered consistently and effectively in accordance with the objectives of this Agreement.

3. The Parties shall facilitate mutual assistance, technical skills and the implementation of technologies, cooperation and exchange of information, in order to expedite the procedures established in these rules.

4. Each Party shall provide the other Party with the name and address of its qualified entities and custom authorities together with the original and legible specimen impression of their stamp, the sample of the certificate of origin to be used and the data on the security features of the certificate of origin.

Article 3.33: Confidentiality

Each Party shall, in accordance with its laws and regulations, keep the confidentiality of information provided pursuant to this Chapter. The information shall not be disclosed without the permission of the person or authority of the Party providing it.

Article 3.34: Committee on Rules of Origin

1. The Parties hereby establish the Committee on Rules of Origin, composed of representatives of each Party, for the purposes of effective implementation of the provisions of this Chapter.

2. The Committee shall have the following functions:

a) monitoring the implementation and administration of this Chapter; and

b) discussing any proposed modifications of the rules of origin under this Chapter.

3. The Committee shall meet at such time and venue as may be agreed by the Parties, but no less than once a year.

ANNEX 3-A
PRODUCT SPECIFIC RULES

Section A
Interpretative Notes

1. Interpretative notes within this Annex shall apply to all headings or subheadings within the indicated chapter unless there exists a specific exclusion.

"**WO**" means that the good must be wholly produced or obtained in accordance with paragraph a) of Article 3.3 (Originating Goods) of Chapter 3 (Rules of Origin);

"**RVC(X)**" means that the good must have a regional value content of not less than X per cent as calculated under paragraph d) of Article 3.3 (Originating Goods) of Chapter 3 (Rules of Origin);

"**CC**" means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the two-digit level;

"**CTH**" means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level;

"**CTSH**" means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the six-digit level;

2. For the purposes of Article 3.3 (Originating Goods), the formula for calculating Regional Value Content or RVC is as follows:

a) Direct Method

$$RVC = \frac{\text{Value of Originating Material} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100\%$$

b) Indirect Method

$$RVC = \frac{\text{FOB Price} - \text{Value of Non- Originating Materials, Parts or Goods}}{\text{FOB Price}} \times 100\%$$

For the purposes of calculating the RVC provided in paragraph 1 of this Article:

(a) Value of Originating Material is the CIF value of originating materials, parts or goods that are acquired or selfproduced by the producer in the production of the good;

(b) Value of Non-Originating Materials, Parts or Goods shall be:

(i) The CIF value at the time of importation of the goods or importation can be proven; or

(ii) The earliest ascertained price paid for the goods of undetermined origin in the territory of a Party where the working or processing takes place;

(c) Direct labour cost shall include wages, remuneration and other employee benefits associated with the manufacturing process;

(d) The calculation of direct overhead cost shall include, but is not limited to, real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage); leasing of and interest payments for plant and equipment; factory security; insurance (plant, equipment and materials used in the manufacture of the goods); utilities (energy, electricity, water and other utilities directly attributable to the production of the goods); research, development, design and engineering; dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment; royalties or licences (in connection with patented machines or processes used in the manufacture of the goods or the right to manufacture the goods); inspection and testing of materials and the goods; storage and handling in the factory; disposal of recyclable wastes; and cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component; and

(e) FOB price means the FOB value of the goods as defined in Article 3.2 (Definitions). FOB price shall be determined by adding the value of materials, production cost, profit and other costs.

ANNEX 3-B
CERTIFICATE OF ORIGIN (FORM VN-CU)
Original (Duplicate/Triplicate/ ...)

<table>
<tr><td colspan="3">1. Goods consigned from (Exporter's business name, address, country)</td><td colspan="3" rowspan="2">4. Reference No.

VIET NAM - CUBA TRADE AGREEMENT
CERTIFICATE OF ORIGIN
FORM VN-CU

Issued in: _____
(Country)

(See Overleaf Notes)</td></tr>
<tr><td colspan="3">2. Goods consigned to (Consignee's name, address, country)</td></tr>
<tr><td colspan="3" rowspan="2">3. Means of transport and route (As far as known)</td><td colspan="3">5. For Official Use (Customs)

☐ Preferential Tariff Treatment Given Under VIET NAM – CUBA Trade Agreement

☐ Preferential Tariff Treatment Not Given (Please state reason(s))

.....
Signature of Authorised Signatory of the Importing Country</td></tr>
<tr><td>6. Item number</td><td>7. Harmonized System code</td><td>8. Description of goods, marks and numbers on</td><td>9. Origin criterion (See</td><td>10. Gross weight or other</td><td>11. Number and date (DD/MM/YYYY) of invoices</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="6">12. Remarks</td></tr>
<tr><td colspan="3">13. Declaration by the exporter
The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in

.....
(Country)

and that they comply with the origin requirements specified for these goods in the Viet Nam - Cuba Trade Agreement for the goods exported to

.....
(Importing country)

.....</td><td colspan="3">14. Certification
It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.

.....
Place, date, signature and stamp of certifying authority</td></tr>
<tr><td colspan="6">15. ☐ Non-Party Invoicing ☐ Certified True Copy ☐ Accumulation
☐ De Minimis ☐ Set of Goods</td></tr>
</table>

OVERLEAF NOTES

The Certificate of Origin and its additional sheets must be in conformity with the specimen shown in this Annex. It shall be made in the English language. For Viet Nam, they must be on ISO A4 size colour paper. For Cuba, they can be printed on any paper size subject to specific Cuba conditions.

For the purposes of requesting preferential tariff treatment, this form must be clearly completed by the exporter.

If the space in this form is insufficient to specify the necessary details to identify goods and any other related information, the exporter may provide information through additional forms of Certificate of Origin. Unused spaces in boxes 6 through 11 shall be crossed out or add " *** " (three stars) to prevent any subsequent addition.

Box 1: Business name, address and country of the exporter. It may include the manufacturer's or the producer's details/contacts.

Box 2: Name, address and country of the consignee.

Box 3: Means of transport and route as well as port of charge, transit, port of discharge, date of dispatch, vessel's name or flight number (as far as known).

Box 4: Details of unique reference number, issuing country.

Box 5: Importing Party's customs use.

Box 6: Item number. All the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are sent.

Box 7: Harmonized System code: The six-digit code of the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including all legal notes thereto, as in force and as amended from time to time.

Box 8: Description of the good must correspond, in general terms, to the description for the good under the Harmonized System code indicated in box 7. The description of the goods must be detailed enough to enable the goods to be identified by the customs officers examining them.

Box 9: For goods that meet the origin criteria, the exporter and/or producer must indicate the origin criteria met, as shown in the following table:

Origin criterion	Insert in Box 9
(a) Goods satisfying Article 3.3 (Originating Goods) of Chapter 3 (Rules of Origin): - wholly obtained; - or produced entirely in the territory of either Party	WO PE
(b) Goods satisfying Article 3.3 (Originating Goods) of Chapter 3 (Rules of Origin):	
• Regional Value Content	Percentage of Viet Nam-Cuba value content, for example: RVC (40%)
• Change in Tariff Classification	CTC
• Product Specific Rules	As listed in the PSR (Annex 3-A)

Box 10: Quantity or gross weight of goods.

Box 11: Indicate invoice number(s) and date(s) for each good. In case the goods are invoiced by a non-Party operator, the number and date of the invoice issued by the non-Party operator (if known) can also be indicated.

Box 12: Remarks. This box is for additional information (if any):

- In case of a non-Party invoice, indicate name, address and legal office (including city and country) of the non-Party operator issuing the invoice (if known).

- In case of a new Certificate of Origin issued to replace a wrong certificate (Article 3.23 (Correction of a Certificate of Origin)), indicate the word "Replace C/O number", then the reference number and the date of issue of the original Certificate of Origin.

Box 13: This box must be completed indicating the place, date and signature of the exporter.

Box 14: This box must be completed indicating the place, date, name, signature and stamp of the relevant authority of the exporting Party.

Box 15: Tick appropriate box in case of "Third Country Invoicing", "Certified True Copy", "Accumulation", "*De Minimis*" or Set of Goods".

CHAPTER 4
CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

a) in the case of Cuba, the General Customs Office; and

b) in the case of Viet Nam, the General Department of Viet Nam Customs;

customs laws and regulations means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

customs procedures means the treatment applied by the customs authority of each Party to goods which are subject to customs control;

requesting authority means the customs authority which requests assistance; and

requested authority means the customs authority from which assistance is requested.

Article 4.2: Objectives

The objectives of this Chapter are to:

a) simplify and harmonise customs procedures of the Parties;

b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;

c) ensure efficient and expeditious release of goods;

d) facilitate trade in goods between the Parties by the use of information and communication technology, taking into account international standards; and

e) promote cooperation between the customs authorities with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council of the World Customs Organization.

Article 4.3: Scope and Coverage

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

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

Article 4.4: Review and Appeal

1. Each Party shall ensure that with respect to its determinations on customs matters, in accordance with the Party's domestic laws and regulations, importers in its territory have access to:

a) administrative review independent of the official or office that issued the determination; and

b) judicial review of the determination or decision taken at the final level of administrative review.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 4.5: Release of Goods

1. Each Party shall endeavour to apply customs procedures in a predictable, consistent and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.

2. For prompt release of goods traded between the Parties, each Party shall to the extent possible:

a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and regulations;

b) make use of information and communications technology;

c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;

d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the World Customs Organization; and

e) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees, subject to domestic procedures.

3. Each Party shall ensure, to the extent possible, that their competent authorities are involved in border control, and export and import of goods to facilitate trade between the two Parties.

4. When goods imported into a Party do not meet sanitary or phytosanitary or technical regulations according to that Party's domestic laws and regulations and/or specific requirements provided for under this Agreement, such goods should be re-exported to the exporter or other persons designated by the exporter.

5. With a view to preventing avoidable loss or deterioration of perishable goods[1], and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods:

a) under normal circumstances within the shortest possible time; and

b) in the exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

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

Article 4.6: Risk Management

1. In order to facilitate release of goods traded between the Parties, and within available resource and competence of each Party, the customs authority shall use risk management methodology.

2. The customs authority of each Party shall, to the extent possible, cooperate and exchange information for the purposes of risk management and targeting.

3. Each Party shall endeavour to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

Article 4.7: Customs Cooperation

To the extent permitted by their domestic laws and regulations, the customs authority of each Party shall assist each other in relation to:

a) achieving compliance with their laws and regulations pertaining to the implementation and operation of the provisions of this Agreement; and such other customs matters as the Parties may agree;

[1] For the purposes of this Article, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

b) the implementation and operation of the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;

c) the enforcement of prohibitions and restrictions on exports to and imports from their respective territories;

d) joint efforts to combat customs fraud; and

e) cooperation in any other areas as may be mutually agreed by the Parties.

Article 4.8: Mutual Assistance

1. The customs authority of each Party shall, to the extent possible, provide the customs authority of the other Party, upon request or on its own initiative, with information which helps to ensure proper application of customs laws and regulations, and the prevention of violation or attempted violation of customs laws and regulations.

2. To the extent permitted by their customs laws and regulations, the customs authorities may provide each other with mutual assistance in order to prevent or investigate violations of customs laws and regulations.

3. The request pursuant to paragraph 1 shall, wherever appropriate, specify:

a) the verification procedures that the requesting authority has undertaken or attempted to undertake; and

b) the specific information that the requesting authority requires, which may include:

(i) subject and reason for the request;

(ii) a brief description of the matter and the action requested; and

(iii) the names and addresses of the parties concerned with the proceedings, if known.

Article 4.9: Enforcement Against Illicit Trafficking

The customs authority of each Party shall, to the extent permitted by their laws and regulations, wherever possible, cooperate and exchange information in their enforcement against the trafficking of illicit drugs and other prohibited goods in their respective territories.

Article 4.10: Advance Rulings

1. Each Party shall endeavour to issue, before the importation of goods into their territory, a written advance ruling at the written request of an importer in its territory, or an exporter in the territory of the other Party, on:

a) tariff classification;

b) whether a good qualifies as originating in accordance with the provisions of Chapter 3 (Rules of Origin) of this Agreement;

c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts; and

d) other matters that the Parties agree.

2. An importer or exporter may request an advance ruling through a duly authorised representative in accordance with domestic laws and regulations of the Party to which such request is made.

3. Each Party shall issue an advance ruling within 90 days after receiving the application, provided that the applicant has submitted all information that the Party requires, including, if the Party requests, a sample of the goods for which the applicant is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has submitted.

4. The advance rulings shall take effect from the date of issuance, or another date specified in the decision, provided that the facts or circumstances in which the decision is based have not changed.

5. If a Party declines to issue an advance ruling, it shall notify the applicant in writing, setting out the relevant facts and the basis for its decision.

6. A Party may decline to issue an advance ruling to the applicant where the question raised in the application:

a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court;

b) has already been decided by any appellate tribunal or court; or

c) is not in accordance with the conditions for requesting advance ruling.

7. The advance ruling shall be valid for a reasonable period of time after its issuance as prescribed in the national law of the issuing Party. The advance ruling shall not be valid if the law, facts, or circumstances supporting that ruling have changed or the profile submitted to request advance ruling is different from the customs profile submitted at the time of importation or exportation.

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

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

10. Each Party shall publish, at a minimum:

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

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

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

11. Each Party shall endeavour to 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 as prescribed in the national law of each Party.

Article 4.11: Authorised Economic Operator

1. Each Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures to operators who meet specified criteria, hereinafter called authorised economic operators. 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 economic operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party's laws, regulations or procedures.

3. The customs authorities of the Parties will encourage and work towards an agreement on mutual recognition of authorised economic operator schemes.

Article 4.12: Post-clearance Audit

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

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

3. The 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 4.13: Single Window

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

Article 4.14: Pre-Arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, 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, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

Article 4.15: Confidentiality

1. Each Party's customs authority undertakes not to use any information received in accordance with this Chapter or Chapter 3 (Rules of Origin) other than for the purpose for which the information was given, or to disclose any such information, except in cases where:

a) the customs authority that furnished the information has expressly approved its use or disclosure for other purposes related to this Chapter or Chapter 3 (Rules of Origin); or

b) the domestic laws and regulations of the receiving customs authority require disclosure, in which case the receiving customs authority shall notify the customs authority that furnished the information of the relevant laws and regulations.

2. Any information received in accordance with this Chapter or Chapter 3 (Rules of Origin) shall be treated as confidential and will be subject to the same protection and confidentiality as the same kind of information under the domestic laws and regulations of the customs authority where it is received.

3. Nothing in this Chapter or Chapter 3 (Rules of Origin) shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

a) be contrary to the public interest as determined by its laws, rules or regulations;

b) be contrary to any of its laws, rules and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals; or

c) impede law enforcement.

Article 4.16: Publication and Enquiry Points

For the purposes of this Chapter, each Party shall:

a) publish on the internet or in print form all statutory and regulatory provisions and procedures applicable or enforced by its customs authority; and

b) designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the internet, or in print form, information concerning procedures for making such enquiries.

Article 4.17: Electronic Information Exchange

1. In order to facilitate the performance of customs administration, to expedite the release of goods and to prevent violation of customs laws and regulations, the Parties shall create and implement electronic information exchange on a regular basis.

2. All requirements and specification of the operation of electronic information exchange as well as specific contents of the information to be exchanged shall be set out in a separate protocol between the Parties. Such information shall be sufficient for identification of transported goods and efficient customs control.

3. Any information exchanged in accordance with this Article shall be treated as confidential and shall be used for customs purposes only.

CHAPTER 5
TRADE REMEDIES

Section A
Global Safeguards, Antidumping and Countervailing Measures

Article 5.1: Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the *Agreement on Safeguards* in Annex 1A to the WTO Agreement ("Safeguards Agreement").

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 5.2: Antidumping and Countervailing Measures

1. The rights and obligations of the Parties related to antidumping and countervailing measures shall be governed by Article VI of GATT 1994, the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement and the *Agreement on Subsidies and Countervailing Measures* in Annex 1A to the WTO Agreement.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to the application of antidumping and countervailing measures referred to in paragraph 1.

Section B
Bilateral Safeguard Measures

Article 5.3: Definitions

For the purposes of this Section:

competent investigating authority means:

a) in the case of Cuba, the Tariff National Commission, Ministry of Finance and Prices, or its successor; and

b) in the case of Viet Nam, the Trade Remedies Authority of Viet Nam, Ministry of Industry and Trade, or its successor;

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

serious injury means a significant overall impairment in the position of a domestic industry;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

transition period means the five-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the tariff elimination period for that good.

Article 5.4: Imposition of a Bilateral Safeguard Measure

1. A Party may impose a bilateral safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement, a good originating in the territory of the other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to a domestic industry production, and under such conditions as to cause serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph l are met, and to the extent as may be necessary, to prevent or remedy serious injury, or threat thereof, a Party may:

a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or

b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) the most-favoured-nation ("MFN") applied rate of customs duty in effect at the time the action is taken; or

(ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 5.5: Standards for a Bilateral Safeguard Measure

1. A Party may apply a bilateral safeguard measure, including any extension thereof, for no longer than three years including a one-year extension, if the competent investigating authorities of the importing Party determined, in conformity with the procedures specified in Article 5.7 (Investigation Procedures and Transparency Requirements), that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting.

2. Upon the termination of a bilateral safeguard measure, the rate of the customs duty shall be the rate which would have been in effect if the bilateral safeguard measure had not been applied.

3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

4. Neither Party may impose a bilateral safeguard measure on a good subject to a previous safeguard measure for a period of time equal to the duration of the previous safeguard measure, or one year, whichever is longer.

5. Neither Party may impose a bilateral safeguard measure on a good that is subject to a global safeguard measure pursuant to Article XIX of GATT 1994 and the Safeguard Agreement, and neither Party may continue maintaining a bilateral safeguard measure on a good that becomes subject to a measure pursuant to Article XIX of GATT 1994 and the Safeguard Agreement.

Article 5.6: Provisional Safeguard Measures

In critical circumstances where delay would cause damage which would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional safeguard measure shall not exceed 200 days. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a definitive safeguard measure.

Article 5.7: Investigation Procedures and Transparency Requirements

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent investigating authority in accordance with Article 3 and Article 4.2(c) of the Safeguards Agreement; and to this end, Article 3 and Article 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; and to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 5.8: Notification and Consultation

2. A Party shall notify the other Party, in writing, on:

a) initiating an investigation under Article 5.7 (Investigation Procedures and Transparency Requirements);

b) taking a decision to impose or extend a bilateral safeguard measure; and

c) taking a decision to modify a bilateral safeguard measure previously undertaken.

3. The Party that has initiated an investigation under Article 5.6 (Provisional Safeguard Measures) shall provide to the other Party a copy of the public version of the report of its competent investigating authority required under paragraph 1 of Article 5.7 (Investigation Procedures and Transparency Requirements).

4. Before applying any bilateral safeguard measure a Party should provide the other Party with the opportunity for consultation on issues related to the investigation and application of bilateral safeguard measures.

Article 5.9: Compensation

1. A Party applying a bilateral safeguard measure shall, after consultations with the other Party against whose good the measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, the Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. The Party against whose good the measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the bilateral safeguard measure.

5. The right of suspension referred to in paragraph 2 shall not be exercised for the first year that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

CHAPTER 6
WITHDRAWAL OF AGREED PREFERENTIAL TREATMENTS

Article 6.1: Withdrawal of Agreed Preferential Treatments

1. There shall be no unilateral withdrawal of agreed preferential treatments during the term of this Agreement.

2. Exclusion from a concession in the course of negotiations for the purposes of amending this Agreement pursuant to Article 14.2 (Amendments) of Chapter 14 (Final Provisions) shall not be deemed unilateral withdrawal of an agreed preferential treatment.

3. The lapse of a temporary preference upon its expiration, in the absence of its renewal, shall not be deemed unilateral withdrawal of an agreed preferential treatment.

CHAPTER 7
STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

Article 7.1: Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 to the *Agreement on Technical Barriers to Trade* in Annex 1A to the WTO Agreement ("the TBT Agreement") shall apply, *mutatis mutandis*.

Article 7.2: Objectives

The objectives of this Chapter are to:

a) increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;

b) ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade; and

c) enhance joint cooperation between the Parties.

Article 7.3: Scope

For the mutual benefits of the Parties, this Chapter shall apply to all standards, technical regulations and conformity assessment procedures which may significantly directly or indirectly affect reciprocal trade in goods, except for:

a) purchasing specifications prepared by governmental bodies for the production or consumption requirements of such bodies; and

b) sanitary and phytosanitary measures as defined in Chapter 8 (Sanitary and Phytosanitary Measures).

Article 7.4: Reaffirmation of the TBT Agreement

The Parties reaffirm their rights and obligations under the TBT Agreement.

Article 7.5: General Provisions

1. Each Party shall ensure that in respect of standards, technical regulations and conformity assessments, products imported from the territory of the other Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards, technical regulations and conformity assessment procedures only to the extent

necessary to fulfil a legitimate objective. Such legitimate objectives are, *inter alia*, national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment.

3. In the possible extent, the Parties shall comply with the decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade.

Article 7.6: International Standards

1. Each Party shall use relevant international standards, to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.

2. To determine whether there is an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, the Parties shall apply the principles set out in the latest version of the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995*, issued by the WTO Committee on Technical Barriers to Trade.

Article 7.7: Trade Facilitation

The Parties should work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties, in particular, to identify bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;

b) harmonisation with international standards;

c) establishment of confidence in supplier's declaration of conformity; and

d) use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition of conformity assessment results.

Article 7.8: Technical Regulations

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

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

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

Article 7.9: Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of conformity assessment results conducted in the other Party's territory. For example:

a) conformity assessment bodies located in each Party's territory may enter into arrangements to accept the other Party's conformity assessment results;

b) a Party may accept conformity assessment results conducted by bodies located in the other Party's territory with respect to specific technical regulations;

c) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party; and

d) a Party may designate conformity assessment bodies located in the territory of the other Party to carry out conformity assessment activities.

2. The Parties shall exchange information on the mechanisms provided for in paragraph 1 and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

3. A Party shall, upon request of the other Party, explain its reasons for not accepting any conformity assessment result conducted in the territory of that other Party.

4. Each Party shall accredit, approve or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves or otherwise recognises a conformity assessment body with a specific technical regulation or standard in its territory and refuses to accredit, approve or otherwise recognise a conformity assessment body with that technical regulation or standard in the territory of the other Party, it shall, upon request of that other Party, explain the reasons for its decision.

5. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of conformity assessment results conducted by bodies in the other Party's territory, it shall, upon request of that other Party, explain the reasons for its decision.

Article 7.10: Transparency

Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published in accordance with the relevant requirements of the TBT Agreement. Such information should be made available in print form and, where possible, in electronic form.

Article 7.11: Technical Cooperation

1. With a view to fulfilling the objectives of this Chapter, a Party shall, upon the request of the other Party and where possible, cooperate towards:

a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for standards, technical regulations, conformity assessment, metrology and accreditation;

b) exchanging general information and publications on conformity assessment activities, including certification, inspection, testing, verification and accreditation of conformity assessment bodies;

c) providing technical advice, information and assistance on mutually agreed terms and conditions and exchanging experience, joint studies to enhance the other Party's system for standards, technical regulations, conformity assessment and related activities;

d) giving favourable consideration, upon request of the other Party, to any sector-specific proposal for further cooperation;

e) promoting and encouraging bilateral cooperation between respective organisations of the Parties responsible for activities covered by this Chapter;

f) increasing their bilateral cooperation in the relevant regional and international organisations and fora dealing with the issues covered by this Chapter; and

g) informing the other Party, as far as possible, about the agreements or programmes subscribed at international level in relation to technical barriers to trade issues.

2. With regard to conformity assessment, the Parties shall take into consideration their participation in the applicable regional and/or international organisations such as the International Accreditation Forum ("IAF"), the International Laboratory Accreditation Cooperation ("ILAC"), the Inter American Accreditation Cooperation ("IAAC"), the Asia Pacific Laboratory Accreditation Cooperation ("APLAC"), the Pacific Accreditation Cooperation ("PAC") and other relevant international organisations.

Article 7.12: Technical Consultations

1. Consultations on any matter arising under this Chapter shall be held at the request of a Party, which considers that the other Party has taken a measure which is likely to create, or has

created, an obstacle to trade. Such consultations shall take place within 60 days from the request with the objective of finding mutually acceptable solutions. Such consultations may be conducted by any mutually agreed method.

2. Where a matter covered under the scope of this Chapter cannot be clarified or resolved as a result of consultations, the Parties, through the Committee on Standards, Technical Regulations and Conformity Assessment Procedures, may establish an *ad hoc* working group with a view to identifying a practical solution to facilitate trade. The *ad hoc* working group shall comprise representatives of the Parties.

3. When a Party declines a request from the other Party to establish an *ad hoc* working group, it shall, upon request of the other Party, explain the reasons for its decision.

4. When the *ad hoc* working group referred to in paragraph 2 cannot resolve the matter between the Parties, any of them may activate the dispute settlement regime under Chapter 12 (Dispute Settlement) of this Agreement.

Article 7.13: Contact Points

1. Each Party shall designate a contact point which shall, for that Party, have responsibility to coordinate the implementation of this Chapter.

2. Each Party shall provide the other Party with the name of its designated contact point and the contact details of relevant officials in that organisation, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify the other Party promptly of any change of its contact point or any amendments to the details of relevant officials.

Article 7.14: Information Exchange

Any information or explanation that is provided upon the request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.

Article 7.15: Committee on Standards, Technical Regulations and Conformity Assessment Procedures

1. In order to facilitate the implementation of this Chapter and the cooperation between the Parties, the Parties hereby agree to establish a Committee on Standards, Technical Regulations and Conformity Assessment Procedures ("STRACAP Committee"), comprising representatives of each Party.

2. For the purposes of this Article, the Committee's work will be coordinated by:

a) in the case of Cuba, the Ministry of Foreign Trade and Investment jointly with the National Standardization Office; and

b) in the case of Viet Nam, the Directorate for Standards, Metrology and Quality, Ministry of Science and Technology.

3. The STRACAP Committee shall meet as mutually determined by the Parties. Its meetings may be conducted in person or by any other means as mutually determined by the Parties.

4. The STRACAP Committee shall be established no later than 120 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative (s) of each Party to the Committee and the Committee's Terms of Reference shall be made in accordance with this Chapter.

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

6. Where there is a non-compliance of an imported consignment with the technical regulations or conformity procedures of the importing Party, the Parties, through the STRACAP Committee, shall undertake necessary steps to address the non-compliance without undue delay.

CHAPTER 8
SANITARY AND PHYTOSANITARY MEASURES

Article 8.1: Definitions

For the purposes of this Chapter:

sanitary and phytosanitary measures ("SPS measures") shall have the same meaning as in paragraph 1 of Annex A of the SPS Agreement.

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement.

competent authorities means those organisations recognised by a Party as responsible for developing and administering that Party's various SPS measures.

international standards, guidelines and recommendations shall have the same meaning as in paragraph 3 of Annex A of the SPS Agreement.

Article 8.2: Objectives

The objectives of this Chapter are to:

a) ensure that SPS measures imposed by the Parties do not create unnecessary obstacles to trade while protecting human, animal or plant life or health in the territory of each Party;

b) provide greater transparency and understanding in the application of each Party's SPS measures;

c) strengthen cooperation between the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

d) enhance practical implementation of the principles and disciplines contained within the SPS Agreement taking into account the international standards, guidelines and recommendations developed by the World Organisation for Animal Health ("OIE"); the International Plant Protection Convention ("IPPC") and the Codex Alimentarius Commission ("Codex").

Article 8.3: Scope

This Chapter shall apply to the development, adoption and application of all SPS measures of each Party that may directly or indirectly affect trade between the Parties, including any amendment or addition thereto.

Article 8.4: General Provisions

1. The Parties reaffirm their rights and obligations with respect to each other under the SPS Agreement.

2. Neither Party shall apply its SPS measures as an arbitrary or unjustifiable discrimination or a disguised restriction on trade between the Parties.

Article 8.5: Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

2. The importing Party shall accept the SPS measures of the exporting Party as equivalent, even if these measures differ from its own measures, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection.

Article 8.6: Regionalisation

1. The Parties shall take into account the relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement and of the relevant international standard-setting bodies on concept of adaptation to regional conditions.

2. The Parties shall cooperate on the recognition of pest- and disease-free areas, and areas of low pest and disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- and disease-free areas, and areas of low pest and disease prevalence.

Article 8.7: Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration and information exchange on sanitary and phytosanitary matters ("SPS matters") of mutual interest in consistence with the objectives of this Chapter.

2. Each Party shall give favourable consideration to a sector-specific proposal of the other Party and endeavour to coordinate with bilateral work programmes with the objective of avoiding unnecessary duplication and maximising the benefits from the application of resources.

3. The Parties shall cooperate and jointly identify work in the field of SPS measures with a view to eliminating unnecessary obstacles to trade between the Parties. In particular, the Parties shall, within one year after the date of entry into force of this Agreement, identify initiatives and start processes of evaluation for cooperation on particular issues or sectors, such as cooperation on regulatory issues, recognition of equivalence, mutual recognition agreement, adaptation to regional conditions, or other cooperative arrangements.

Article 8.8: Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Measures ("SPS Committee").

2. The SPS Committee's functions shall include:

a) monitoring the progress of implementation of this Chapter;

b) providing a forum to exchange information, expertise, experience in the field of SPS matters and for discussion of problems arising from the application of certain sanitary or phytosanitary measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade between the Parties;

c) identifying, initiating and reviewing technical assistance projects and activities between the Parties; and

d) implementing other functions that are mutually agreed by the Parties.

3. The SPS Committee shall consist of appropriate representatives of each Party who have responsibility for SPS measures. All decisions of the Committee shall be made by mutual agreement.

4. The SPS Committee may establish *ad hoc* technical working groups as required to undertake specific tasks.

5. The SPS Committee shall meet in person within one year from the date of entry into force of this Agreement and at least annually thereafter or mutually determined by the Parties. The meetings may be conducted via teleconference, via videoconference, or through other means as mutually agreed by the Parties.

6. The Parties shall establish the SPS Committee not later than 120 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the SPS Committee and establishing the SPS Committee's Terms of Reference.

Article 8.9: Consultations

1. Where a Party considers that an SPS measure affecting trade between the Parties and the other Party warrants further discussion, it may, through the contact point, request a full explanation of the SPS measure and if necessary, request to hold consultations to resolve. The other Party shall respond promptly to any request for such explanations and/or consultations.

2. The Parties shall make every effort to reach a mutually satisfactory resolution through consultation on a timeline mutually agreed upon by both Parties. Should the consultations fail to

achieve resolution, the matter shall be forwarded to the Joint Committee referred to in Article 11. 2 (Joint Committee).

Article 8.10: Implementation

1. The Parties shall take full responsibility for the implementation of all provisions under this Chapter.

2. As of the date of entry into force of this Agreement, the Parties shall provide each other with a description of the respective competent authorities and their division of responsibilities.

3. To facilitate the implementation of this Chapter, the Parties shall designate the following contact points:

a) in the case of Cuba, the Ministry of Foreign Trade and Investment; and

b) in the case of Viet Nam, the Ministry of Agriculture and Rural Development.

4. The contact points' functions shall include:

a) enhancing communication between the Parties' competent authorities and ministries with responsibility for SPS matters and, facilitating a Party's response to written request from the other Party in print or electronically without undue delay, and in any case within 30 working days from the date of the request;

b) facilitating information exchange so as to enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures and their impact on trade in the goods concerned between the Parties; and

c) coordinating meetings and activities of the SPS Committee as referred to in Article 8.8 (Committee on Sanitary and Phytosanitary Measures).

5. The Parties shall ensure the information provided under paragraphs 2 and 3 are kept up to date.

CHAPTER 9
TRADE IN SERVICES

Article 9.1: Trade in Services

The Parties recognise the importance of trade in services to the growth of their respective economies and agree to negotiate provisions for trade in services between them in the near future.

CHAPTER 10
ECONOMIC AND TRADE COOPERATION

Article 10.1: Cooperation Fields and Activities

1. The Parties recognise the importance of cooperation in science and technology, and innovation and knowledge transfer to achieve greater social and economic development. In that sense, the Parties will promote the training of specialists and experts in disciplines relevant to foreign trade, the exchange of information and experiences on scientific research, mutual assistance for technological development and productivity, among other relevant disciplines. At the same time, the Parties will encourage the creation of strategic alliances between public and private entities for the execution of these or other activities in the sectors of the economy for the interest of both Parties.

2. The Parties will encourage the establishment of programmes for promoting and expanding trade, facilitating the activities of official and private-sector delegations, organising trade fairs and exhibitions and informative seminars, performing market studies, exchanging information and otherwise fostering initiatives designed to maximise the take-up of tariff preferences and the opportunities for trade. The Parties will also facilitate participation in trade fairs by streamlining the related administrative formalities, including those for temporary importation of goods for exhibition purposes or professional use for demonstration purposes.

CHAPTER 11
ADMINISTRATION AND REVIEW

Article 11.1: Review

The Parties shall conduct reviews of this Agreement and the preferences it confers, with a view to ensuring harmonious and balanced progress in their economic and trading relations and a consequent equitable generation of mutual benefits.

Article 11.2: Joint Committee

1. The Parties hereby establish a Joint Committee, which shall be composed of relevant government officials of each Party. The Joint Committee shall be co-chaired by a representative from the Ministry of Foreign Trade and Investment of Cuba and a representative from the Ministry of Industry and Trade of Viet Nam.

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

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

b) consider and, as appropriate, decide on specific matters relating to the implementation and operation of this Agreement, including matters reported by relevant Committees or working groups established under this Agreement;

c) supervise and coordinate the work of the Committees and the working groups established under this Agreement;

d) seek to resolve disputes that may arise regarding the interpretation, implementation or application of this Agreement; and

e) carry out any other function as the Parties may agree.

Article 11.3: Procedures of the Joint Committee

1. The Joint Committee shall convene annually in regular sessions, unless the Parties otherwise agree. The first meeting of the Joint Committee shall be held within 180 days after the date of entry into force of this Agreement or as otherwise agreed by the Parties.

2. The Joint Committee shall meet alternately in Viet Nam and Cuba, unless the Parties otherwise agree.

3. The Joint Committee shall also meet in special sessions within 45 days of the request of a Party. Such sessions shall be held in the capital of the other Party or at such location as may be agreed by the Parties.

4. Meetings of the Joint Committee may be held in person or, if agreed by the Parties, by any technological means available to them.

5. All decisions of the Joint Committee shall be taken by mutual agreement.

6. The Joint Committee shall establish its rules and procedures at its first meeting as referred to in paragraph 1.

CHAPTER 12
DISPUTE SETTLEMENT

Article 12.1: Scope of Application

Except as otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties regarding the implementation, interpretation or application of this Agreement wherever a Party considers that:

a) a measure of the other Party is inconsistent with the obligations of this Agreement; or

b) the other Party has failed to carry out its obligations under this Agreement.

Article 12.2: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another trade agreement to which both Parties are party or the WTO Agreement, the complaining Party may select the dispute settlement procedure to resolve the dispute.

2. Once the complaining Party has requested a dispute settlement panel under an agreement referred to in paragraph 1, the dispute settlement procedure selected shall be used to the exclusion of the others, except as mutually agreed by both Parties.

Article 12.3: Consultations

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

2. The request for consultations shall set out the reasons for the request, including identification of the specific measures at issue and an indication of the legal basis for the complaint, and providing sufficient information to enable an examination of the matter.

3. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to reaching a prompt and mutually satisfactory resolution of the matter. In case of consultations regarding perishable goods, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

4. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

5. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

6. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

7. Consultations may be conducted face-to-face or by any technological means available to the Parties. Unless the Parties agree otherwise, face-to-face consultations shall take place alternately in Viet Nam and Cuba. The venue for the first consultation shall take place in the country of the Party to which the request for consultations is made.

Article 12.4: Referral of Matters to the Joint Committee

1. If the consultations fail to resolve the dispute within 40 days after the date of receipt of the request for consultations under Article 12.3 (Consultations), or 20 days after the date of receipt of the request for consultations under Article 12.3 (Consultations) in cases of urgency, including those which concern perishable goods, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party. The Joint Committee shall endeavour to resolve the matter.

2. To assist the Parties to reach a mutually satisfactory resolution of the dispute, the Joint Committee may:

a) call on such technical advisers or create such working groups or expert groups as it deems necessary. The costs arising from the participation of such experts, to be agreed by the Joint Committee, shall be borne equally by the Parties;

b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, whose proceedings and in particular the positions taken by the disputing Parties during them, shall be confidential and without prejudice to the rights of any Party in any further proceedings under these procedures; or

c) make recommendations and set out the date by which recommendations should be complied with by the Parties.

Article 12.5: Establishment of Panel

1. The complaining Party that made a request for consultations under Article 12.3 (Consultations) may request in writing the establishment of a panel if the Parties:

a) fail to resolve the matter within 45 days after the date of receipt of the request for consultations under Article 12.3 (Consultations) if there is no referral to the Joint Committee under Article 12.4 (Referral of Matters to the Joint Committee);

b) fail to resolve the matter within 30 days after the Joint Committee convened pursuant to Article 12.4 (Referral of Matters to the Joint Committee), or 15 days in cases of urgency including those which concern perishable goods except the cases referred to in subparagraph d);

c) fail to resolve the matter within 60 days after the date of receipt of the request for consultations under Article 12.3 (Consultations), or 30 days in cases of urgency including those which concern perishable goods, if the Joint Committee has not convened after a referral under Article 12.4 (Referral of Matters to the Joint Committee); or

d) fail to comply with recommendations by the date set out by the Joint Committee as referred to in subparagraph 2 c) of Article 12.4 (Referral of Matters to the Joint Committee).

2. Any request to establish a panel pursuant to this Article shall identify:

a) the specific measure at issue;

b) the legal basis of the complaint, including any provision of this Agreement alleged to have been breached and any other relevant provision; and

c) the factual basis for the complaint.

3. The panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

4. The date of the establishment of a panel shall be the date on which the chair of the panel is appointed.

Article 12.6: Terms of Reference of Panel

Unless the Parties otherwise agree within 20 days after the date of receipt of the request for the establishment of a panel, the terms of reference of the panel shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel pursuant to Article 12.5 (Establishment of Panel), to make findings of law and fact and determinations on whether the measure is not in conformity with the Agreement together with the reasons therefore and to issue a written report for the resolution of the dispute. If the Parties agree, the panel may make recommendations for the resolution of the dispute."

Article 12.7: Composition of Panel

1. A panel shall comprise three panellists.

2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of a panel, appoint one panellist, who may be its national and propose up to three candidates to serve as the third panellist, who shall be the chair of the panel. The third panellist shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be currently or previously employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall agree on and appoint the third panellist within 45 days after the date of receipt of the request for the establishment of a panel, taking into account the candidates proposed pursuant to paragraph 2.

4. If any panellist has not been designated or appointed within 45 days after the date of receipt of the request for establishment of a panel, upon the request of any Party, the necessary designations shall be made by the Director General of the WTO within a further period of 15 days.

5. If the Director General of the WTO has not made the necessary designations pursuant to paragraph 4, the panellist or panellists not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.

6. All panellists shall:

a) have expertise or experience in law, international trade or other matters covered by this Agreement;

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

c) be independent of, and not be affiliated with or receive instructions from, either Party; and

d) comply with a code of conduct, as provided for in Annex 12-A (Code of Conduct).

7. If a panellist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 2 to 5, which shall be applied, respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original panellist. The work of the panel shall be suspended for a period beginning on the date the original panellist dies, becomes unable to act or resigns. The work of the panel shall resume on the date the successor is appointed.

Article 12.8: Proceedings of Panel

1. The panel shall meet in closed session except when meeting with the Parties. The Parties to the dispute shall be present at the meetings only when invited by the panel to appear before it.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the panel, including any comments on the draft report and responses to questions raised by the panel, shall be made available to the other Party.

3. The panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

4. The panel shall aim to make its decisions, including its report, by consensus but may also make its decisions, including its report, by majority vote.

5. After notifying the Parties, and subject to such terms and conditions as the Parties may agree, if any, within 10 days, the panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

6. The deliberations of the panel and the documents submitted to it shall be kept confidential.

7. Notwithstanding paragraph 6, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions submitted by the other Party to the panel which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 30 days of a request of the other Party, provide a non-confidential summary of the information or written submissions, which may be disclosed publicly.

8. Each Party shall bear the cost of its appointed panellist and its own expenses. The cost of the panel's chair and other expenses associated with the conduct of the proceedings shall be equally borne by the Parties.

Article 12.9: Suspension or Termination of Proceedings

1. The Parties may agree that the panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time frames regarding the work of the panel shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse, unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the panel by jointly notifying the panel's chair at any time before the issuance of the report to the Parties.

Article 12.10: Report

1. The report of the panel shall be drafted without the presence of the Parties. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the panel.

2. The panel shall, within 180 days or within 60 days in cases of urgency, including those concerning perishable goods, after the date of its establishment, submit to the Parties its draft report.

3. The draft report shall contain both the descriptive part summarising the submissions and arguments of the Parties and the findings and determinations of the panel. If the Parties agree, the panel may make recommendations for the resolution of the dispute in its report. The findings and determinations of the panel and, if applicable, any recommendations, cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

4. When the panel considers that it cannot submit its draft report within the aforementioned 180- or 60-day period referred to in paragraph 2, it shall inform the Parties in writing of the reasons for the delay, together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.

5. A Party may provide written comments to the panel on its draft report within 15 days after the date of submission of the draft report.

6. After considering any written comments on the draft report, the panel may reconsider its draft report and make any further examination it considers appropriate.

7. The panel shall issue its report, within 30 days after the date of submission of the draft report. The report shall include any separate opinions on matters not unanimously agreed and shall not disclose which panellists are associated with majority or minority opinions.

8. The report of the panel shall be final and binding on the Parties.

Article 12.11: Information and Technical Advice

1. Upon request of a Party or on its own initiative, unless the Parties disapprove, the panel may seek information and technical advice from any person or body that it deems appropriate. Before seeking such information or technical advice, the panel shall advise the Parties of its intention and allow sufficient time for the Parties to make comments on such intention. Any information and technical advice so obtained shall be made available to the Parties. The Parties shall be given sufficient opportunity to provide their observations on the information or technical advice obtained.

2. With respect to factual issues concerning other technical matter raised by a Party, the panel may request advisory reports in writing from an expert or experts. The panel, upon request of a Party or on its own initiative, after a consultation with the Parties, may select scientific or technical experts who shall assist the panel throughout its proceedings but shall not have the right to vote in respect of any decision to be made by the panel.

Article 12.12: Implementation of the Report

1. Unless the Parties otherwise agree, the Party complained against shall immediately eliminate the non-conformity as determined in the report of the panel, or if this is not practicable, within a reasonable period of time.

2. The Parties shall continue to consult at all times on the possible development of a mutually satisfactory resolution.

3. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the report of the panel referred to in Article 12.10 (Report), either Party may refer the matter to a panel as provided for in paragraph 7 of Article 12.13 (Non-Implementation - Compensation and Suspension of Concessions or other Obligations), which shall determine the reasonable period of time. As a guideline, the reasonable period of time should not exceed 15 months following the date of issuance of the panel's report.

4. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the report of the panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to a panel as provided for in paragraph 7 of Article 12.13 (Non-Implementation - Compensation and Suspension of Concessions or other Obligations).

Article 12.13: Non-Implementation - Compensation and Suspension of Concessions or other Obligations

1. If the Party complained against notifies the complaining Party that implementation is impracticable, or the panel to which the matter is referred pursuant to paragraph 4 of Article 12.12 (Implementation of the Report) confirms that the Party complained against has failed to eliminate the non-conformity as determined in the report of the panel within the reasonable period of time as determined pursuant to paragraph 3 of Article 12.12 (Implementation of the Report), the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on a mutually satisfactory compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension with 30 days in advance. Such notification may only be given 20 days after the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated, or a mutually satisfactory resolution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the report of the panel referred to in paragraph 7 of Article 12.10 (Report) has found a failure to comply with the obligations under this Agreement; and

b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraphs 2, 3, 4 or 5 have not been met, it may refer the matter to a panel.

7. The panel that is established for the purposes of this Article or Article 12.12 (Implementation of the Report) shall have, wherever possible, as its panellists, the panellists of the original panel. If this is not possible, then the panellists to the panel that is established for the purposes of this Article or Article 12.12 (Implementation of the Report) shall be appointed pursuant to Article 12.7 (Composition of Panel). The panel established under this Article or Article 12.12 (Implementation of the Report) shall issue its report within 60 days after the date when the matter is referred to it. When the panel considers that it cannot issue its report within the aforementioned 60-day period, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be final and binding on the Parties.

Article 12.14: Rules of Procedures

1. The panel shall follow the rules of procedure provided for in Annex 12-B (Rules of Procedures for Panel), unless the Parties agree otherwise.

2. Any time period or other rules and procedures for panels provided for in this Chapter, including the Rules of Procedures referred to in Annex 12-B (Rules of Procedures for Panel), may be modified by mutual consent of the Parties.

3. The Parties may also agree in writing, at any time, not to apply any provision of this Chapter.

ANNEX 12-A
CODE OF CONDUCT

Responsibilities to the Process

1. Every candidate and panellist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement proceedings are preserved.

Disclosure Obligations

2. Prior to confirmation of his or her appointment as a panellist, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once appointed, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 2 and shall disclose them. The obligation to disclose is a continuing duty which requires a panellist to disclose any such interests, relationships or matters that may arise during any stage of the proceedings. The panellist shall disclose such interests, relationships or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

Duties

4. Upon appointment, a panellist shall perform a panellist's duties thoroughly and expeditiously throughout the course of the proceedings.

5. A panellist shall carry out all duties fairly and diligently.

6. A panellist shall consider only those issues raised in the proceedings and necessary for a decision and shall not delegate the duty to decide to any other person.

Independence and Impartiality of Panellists

7. A panellist shall be independent and impartial. A panellist shall act in a fair manner, shall avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

8. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panellist's duties.

9. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist.

10. A panellist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panellist's conduct or judgement.

11. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Panellists

12. All former panellists must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the panel.

Confidentiality

13. A panellist or former panellist shall not at any time disclose or use any non-public information concerning the proceedings, or acquired during the proceedings, except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others, or to affect adversely the interest of others.

14. A panellist shall not disclose a panel ruling or parts thereof prior to its publication.

15. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view.

ANNEX 12-B
RULES OF PROCEDURES FOR PANEL

1. The rules and procedures as set out in this Annex shall apply to the proceedings of a panel.

2. The Parties, in consultation with the panel, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Annex.

Written Submissions and other Documents

3. Any request, notice, written submissions or other documents delivered by either Party or the panel shall be transmitted by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

4. A Party shall provide a copy of each of its written submissions to the other Party and to each of the panellists. A copy of the document shall also be provided in electronic format.

5. Minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

Timetable

6. After consulting the Parties, the panel shall, as soon as practicable and whenever possible within seven days after the establishment of the panel, fix the timetable for the panel process. The timetable fixed for the panel shall include precise deadlines for written submissions by the Parties. Modifications to such timetable may be made by the agreement of Parties in consultation with the panel.

Operation of Panel

7. The Panel shall proceed pursuant to Article 12.8 (Proceedings of Panel).

8. Unless the Parties agree otherwise, the venue for panel proceedings shall alternate between the two countries. The first meeting of the panel proceedings shall be held in the capital of the Party complained against.

9. Panel proceedings shall be conducted in the English language. Where documents in Spanish or Vietnamese are submitted, they must be accompanied by the corresponding translation into English.

CHAPTER 13
EXCEPTIONS

Article 13.1: General Exceptions

For the purposes of this Agreement, Article XX of GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 13.2: Security Exceptions

For the purposes of this Agreement, Article XXI of GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 13.3: Taxation

1. For the purposes of this Article, **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement in force between the Parties; and taxation measures do not include customs duties as defined in Article 2.1 (Definitions) of Chapter 2 (Trade in Goods).

2. Unless otherwise provided for in this Article, the provisions of this Agreement shall not apply to any taxation measures.

3. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

Article 13.4: Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures.

2. Restrictions adopted or maintained under paragraph 1 shall:

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

b) not exceed those necessary to deal with the circumstances described in paragraph 1;

c) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

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

3. In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a Party shall promptly commence consultations with the other Party.

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

Article 13.5: Disclosure of Information

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

2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13.6: Payments and Transfers

1. Except under the circumstances envisaged in Article 13.4 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of a Party under any agreements to which it is party, regarding the use of exchange actions.

CHAPTER 14
FINAL PROVISIONS

Article 14.1: Annexes and Footnotes

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

Article 14.2: Amendments

1. The Parties may agree, in writing, to amend this Agreement.

2. When so agreed, and approved in accordance with the necessary domestic legal procedures of each Party, an amendment shall constitute an integral part of this Agreement. Such amendment shall enter into force 60 days after the date on which the Parties exchange written notification that such procedures have been completed.

Article 14.3: Entry into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force on the first day of the second month, following the date of the exchange of the written notifications through diplomatic channels, by which the Parties inform each other that all necessary domestic legal procedures for the entry into force of this Agreement have been completed. This Agreement shall be valid indefinitely.

3. Either Party may notify the other Party of its intention to terminate this Agreement in writing through diplomatic channels. This Agreement shall expire 180 days after the date of such notification.

4. This Agreement annuls and replaces the *Agreement between the Government of the Socialist Republic of Viet Nam and the Government of the Republic of Cuba on Trade Exchange and other Forms of Cooperation*, done at Havana on April 8, 1996.

Article 14.4: Authentic Texts

This Agreement is drawn up in duplicate in the English, Spanish and Vietnamese languages, each of these texts being equally authentic. In the event of divergence between these texts, the English text shall prevail.

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

DONE at Hanoi the ninth day of November, two thousand and eighteen, in the English, Spanish and Vietnamese languages.

For the Government
of the Socialist Republic of Viet Nam

For the Government
of the Republic of Cuba