Treaty Series

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VOLUME 3134 **2016** **I. Nos. 53777-53784**

Recueil des Traités

Traités et accords internationaux
enregistrés
ou classés et inscrits au répertoire
au Secrétariat de l'Organisation des Nations Unies

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NOTE BY THE SECRETARIAT

Under Article 102 of the Charter of the United Nations, every treaty and every international agreement entered into by any Member of the United Nations after the coming into force of the Charter shall, as soon as possible, be registered with the Secretariat and published by it. Furthermore, no party to a treaty or international agreement subject to registration which has not been registered may invoke that treaty or agreement before any organ of the United Nations. The General Assembly, by resolution 97 (I), established regulations to give effect to Article 102 of the Charter (see text of the regulations, vol. 859, p. VIII; https://treaties.un.org/Pages/Resource.aspx?path=Publication/Regulation/Page1_en.xml).

The terms "treaty" and "international agreement" have not been defined either in the Charter or in the regulations, and the Secretariat follows the principle that it acts in accordance with the position of the Member State submitting an instrument for registration that, so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. Registration of an instrument submitted by a Member State, therefore, does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party or any similar question. It is the understanding of the Secretariat that its acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status, and does not confer upon a party a status which it would not otherwise have.

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NOTE DU SECRÉTARIAT

Aux termes de l'Article 102 de la Charte des Nations Unies, tout traité ou accord international conclu par un Membre des Nations Unies après l'entrée en vigueur de la Charte sera, le plus tôt possible, enregistré au Secrétariat et publié par lui. De plus, aucune partie à un traité ou accord international qui aurait dû être enregistré mais ne l'a pas été ne pourra invoquer ledit traité ou accord devant un organe de l'Organisation des Nations Unies. Par sa résolution 97 (I), l'Assemblée générale a adopté un règlement destiné à mettre en application l'Article 102 de la Charte (voir texte du règlement, vol. 859, p. IX; https://treaties.un.org/Pages/Resource.aspx?path=Publication/Regulation/Page1_fr.xml).

Les termes « traité » et « accord international » n'ont été définis ni dans la Charte ni dans le règlement, et le Secrétariat a pris comme principe de s'en tenir à la position adoptée à cet égard par l'État Membre qui a présenté l'instrument à l'enregistrement, à savoir que, en ce qui concerne cette partie, l'instrument constitue un traité ou un accord international au sens de l'Article 102. Il s'ensuit que l'enregistrement d'un instrument présenté par un État Membre n'implique, de la part du Secrétariat, aucun jugement sur la nature de l'instrument, le statut d'une partie ou toute autre question similaire. Le Secrétariat considère donc que son acceptation pour enregistrement d'un instrument ne confère pas audit instrument la qualité de traité ou d'accord international si ce dernier ne l'a pas déjà, et qu'il ne confère pas à une partie un statut que, par ailleurs, elle ne posséderait pas.

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I

Treaties and international agreements

registered in

July 2016

Nos. 53777 to 53784

Traités et accords internationaux

enregistrés en

juillet 2016

N^{os} 53777 à 53784

No. 53777

Germany
and
African Union

Agreement between the Government of the Federal Republic of Germany and the African Union Commission (AUC) regarding Development Cooperation. Addis Ababa, 13 July 2015

Entry into force: *13 July 2015 by signature, in accordance with article 10*

Authentic texts: *English and German*

Registration with the Secretariat of the United Nations: *Germany, 1 July 2016*

Allemagne
et
Union africaine

Accord entre le Gouvernement de la République fédérale d'Allemagne et la Commission de l'Union africaine relatif à la coopération pour le développement. Addis-Abeba, 13 juillet 2015

Entrée en vigueur : *13 juillet 2015 par signature, conformément à l'article 10*

Textes authentiques : *anglais et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 1er juillet 2016*

[TEXT IN ENGLISH – TEXTE EN ANGLAIS]

Agreement

between

the Government of the Federal Republic of Germany

and

the African Union Commission (AUC)

regarding

Development Cooperation

The Government of the Federal Republic of Germany
and
the African Union Commission,

herein jointly referred to as "Contracting Parties" -

in the spirit of the friendly relations existing between the Federal Republic of Germany and the African Union,

desiring to strengthen and intensify those friendly relations through development cooperation in a spirit of partnership,

aware that the maintenance of those relations constitutes the basis of this Agreement,

intending to contribute to political, social and economic development in the African Union -

have agreed as follows:

Article 1
Aims of the cooperation

The aim of the Contracting Parties in entering into this agreement is to cooperate with a view to furthering the African Union's economic and political integration, safeguarding peace and security, fostering democracy and human rights and achieving globally sustainable development reflected equally in economic performance, social justice, environmental viability and political stability.

Article 2

Basis of the cooperation

(1) This cooperation shall be governed by the principles, procedures and obligations agreed in the present Agreement; these shall form the basis for the agreements reached between the Contracting Parties on specific development measures, governed by diplomatic notes and implementation arrangements between the implementing partners under private law, both laying down the details of such measures.

(2) Prior to finalising any agreements on the specific development measures, the Contracting Parties shall conduct a dialogue in a spirit of partnership taking into account all issues regarding the cooperation in the Member States of the African Union. The aims, priority areas of cooperation, development measures and implementing partners for future cooperation shall be agreed upon in consultations and negotiations between the Contracting Parties.

Article 3

Definitions

The following definitions shall apply for the purposes of this Agreement:

1. Offices: representations established by the implementing organisations to provide support for the implementation and steering of development measures and to represent the organisation itself;

2. Direct contributions: advice, basic and further training provided through the employment of experts, contributions and supplies directly provided or commissioned by the Government of the Federal Republic of Germany or an implementing organisation;

3. Implementing organisations: agencies and organisations such as those specified in Article 4 (3) of this Agreement charged by the Government of the Federal Republic of Germany with the implementation of development measures;

4. Implementing partners: the African Union Commission, other organs, agencies and institutions of the African Union and any other institution or organisation that may be jointly selected by the Contracting Parties;

5. Implementation arrangements: contracts under private law concluded by the implementing organisations with the implementing partners on the basis of agreements pursuant to Article 4 (1) of this Agreement, in particular financing and technical agreements;

6. Recipient: the entity entitled to a financial and technical contribution;

7. Development measure: any measure within the scope of development cooperation;

8. Experts: short-term and long-term experts, development advisors and integrated experts as well as seconded and embedded experts;

9. Integrated experts: an expert employed by the implementing partner, whose remuneration is supplemented by the Government of the Federal Republic of Germany;

10. Seconded or embedded experts: experts employed by an implementing organisation but working with an implementing partner;

11. Financing: financial contributions, provision of funds and similar financial instruments granted by the Government of the Federal Republic of Germany via an implementing organisation within the scope of development cooperation;

12. Financial contribution: non-repayable financing (grant) which incurs no interest;

13. Local staff: local expert whose employment contract is governed by the provisions of local labour law where employed by any of the implementing organisations;

14. Host Country: African Union Host Countries are the Federal Democratic Republic of Ethiopia and all African Union member states which have concluded a Host Agreement with an organisation or other institution of the African Union and with which the Federal Republic of Germany maintains diplomatic relations.

Article 4

Agreement of development measures

(1) The Contracting Parties may, on the basis of this Agreement, conclude supplementary specific project agreements under international law.

(2) The obligation of the Government of the Federal Republic of Germany to provide its contributions shall become effective after the Government of the Federal Republic of Germany determines that the proposed development measure has been found eligible for support.

(3) The Government of the Federal Republic of Germany may commission in particular the following implementing organisations or their legal successors with the implementation of individual development measures:

1. the Federal Institute for Geosciences and Natural Resources (BGR);

2. the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;

3. KfW (Reconstruction Loan Corporation), including the German Investment and Development Company (DEG);

4. the National Metrology Institute of Germany (PTB).

(4) The implementation arrangements shall contain binding provisions, in particular for:

1. the aims to be achieved with the development measure and its financing;

2. the timeframe for and organisational and technical aspects of the implementation of the development measure and its financing;

3. the contributions to be provided by the agencies involved;

4. in the case of financing, the procedure for awarding contracts;

5. the consequences if contractual obligations are breached.

Article 5

Replacement of development measures

The development measures agreed pursuant to Article 2 and Article 4 of this Agreement may be replaced by other development measures through an exchange of diplomatic notes provided the Government of the Federal Republic of Germany and the African Union Commission so agree.

Article 6

Contributions and obligations of the Government of the Federal Republic of Germany

(1) In accordance with Article 4 of this Agreement, the Government of the Federal Republic of Germany shall support development measures through, inter alia, technical and financial contributions, including the preparation, implementation and evaluation of development measures.

(2) The Government of the Federal Republic of Germany and the implementing partners shall work out the modalities for the engagement of experts, including seconded experts. The Government of the Federal Republic of Germany shall ensure that experts from the implementing organisations specified in Article 4 (3) of this Agreement:

1. do their best, within the framework of the arrangements concluded on their work, to help achieve the purposes set forth in Article 55 of the Charter of the United Nations;

2. do not interfere in the internal affairs of the Host Country or the African Union including its membership as decided by the African Union;

3. respect the local laws and customs;

4. cooperate in a spirit of mutual confidence with the African Union, other organs, agencies and institutions of the African Union.

(3) If the African Union Commission wishes a seconded or embedded expert to be recalled, it shall notify the Government of the Federal Republic of Germany in good time. Similarly, if the Government of the Federal Republic of Germany wishes to recall a seconded or embedded expert, it shall likewise notify the African Union Commission in good time.

(4) In the case of financial contributions, the African Union Commission, other organs, agencies and institutions of the African Union, or other recipients to be determined jointly by the Contracting Parties shall receive grants or direct contributions from the Government of the Federal Republic of Germany via the implementing organisations.

Article 7

Contributions and obligations of the African Union Commission

(1) The African Union Commission shall contribute to the agreed development measures as follows: It shall

1. ensure the provision of the counterpart contributions specified in the implementation arrangements;

2. ensure in the case of financing that funds are used in a correct and economical manner, on which matter it is accountable to the implementing organisation charged pursuant to Article 4 (3) of this Agreement;

3. ensure overall financing where necessary and in accordance with the implementation arrangements where funds are provided;

4. make available at its own expense the land and buildings required, including furnishings, unless stipulated otherwise in the implementation arrangements;

5. meet the running costs of the development measures, unless stipulated otherwise in the implementation arrangements;

6. make available at its own expense the necessary local staff, unless stipulated otherwise in the implementation arrangements;

7. support, if necessary, applications from the implementing organisations for work permits for staff who are not nationals of the Host Country;

8. support, if necessary, the offices' applications for the installation of telecommunications links, including radio and satellite.

(2) For the purpose of implementing measures listed in this Agreement, the African Union Commission shall endeavour to facilitate the granting of appropriate privileges and immunities, work permits and visas in accordance with the Additional Protocol to the OAU General Convention on Privileges and Immunities of 3 July 1980 as well as the General Convention on the Privileges and Immunities of the Organisation of African Unity (OAU) of 25 October 1965, where applicable. It is understood that it is within the discretion of the Host Country to grant privileges and immunities in accordance with its laws and regulations. These may include:

1. exemption from direct taxes levied in the member state in which measures within the context of this Agreement are being implemented;
2. the reimbursement of VAT and similar indirect taxes where applicable on goods procured or on services used in connection with the project, where applicable, reimbursement of the specific excise duties that have been levied in the member states in connection with the project;
3. exemption from customs duties on materials and motor vehicles imported in connection with a project, where applicable.

Article 8

Settlement of disputes

The Contracting Parties shall resolve disputes or differences of opinion arising from the interpretation or application of this Agreement by mutual consent in a dialogue based on partnership.

Article 9

Privileges and Immunities of the Contracting Parties

Nothing in this Agreement shall affect the privileges and immunities granted to the Contracting Parties under international law.

Article 10

Entry into Force

This Agreement shall enter into force on the date of signature thereof.

Article 11

Amendments

The provisions of this Agreement may be amended provided the Contracting Parties so agree.

Done at Addis Ababa on 13 July 2015
in duplicate in the German and English languages, both texts being equally authentic.

For the Government
of the Federal Republic of Germany

For the African Union Commission
NDlamini Zuma

[TEXT IN GERMAN – TEXTE EN ALLEMAND]

Abkommen

zwischen

der Regierung der Bundesrepublik Deutschland

und

der Kommission der Afrikanischen Union

über

Entwicklungszusammenarbeit

Die Regierung der Bundesrepublik Deutschland
und
die Kommission der Afrikanischen Union

im Folgenden Vertragsparteien genannt –

im Geiste der bestehenden freundschaftlichen Beziehungen zwischen der Bundesrepublik Deutschland und der Afrikanischen Union,

in dem Wunsch, diese freundschaftlichen Beziehungen durch partnerschaftliche Entwicklungszusammenarbeit zu festigen und zu vertiefen,

in dem Bewusstsein, dass die Aufrechterhaltung dieser Beziehungen die Grundlage dieses Abkommens ist,

in der Absicht, zur politischen, sozialen und wirtschaftlichen Entwicklung in der Afrikanischen Union beizutragen –

sind wie folgt übereingekommen:

Artikel 1
Ziele der Zusammenarbeit

Die Vertragsparteien schließen dieses Abkommen mit dem Ziel, zur Förderung der wirtschaftlichen und politischen Integration der Afrikanischen Union, zur Gewährleistung von Frieden und Sicherheit, zur Förderung von Demokratie und Menschenrechten sowie zur Verwirklichung einer global nachhaltigen Entwicklung zusammenzuarbeiten, die sich gleichermaßen in wirtschaftlicher Leistungsfähigkeit, sozialer Gerechtigkeit, ökologischer Tragfähigkeit und politischer Stabilität ausdrückt.

Artikel 2
Grundlagen der Zusammenarbeit

(1) Für diese Zusammenarbeit gelten die in diesem Abkommen vereinbarten Grundsätze, Verfahren und Pflichten; diese bilden die Grundlagen für die Vereinbarung konkreter Entwicklungsmaßnahmen zwischen den Vertragsparteien, die diplomatischen Noten und privatrechtlichen Durchführungsvereinbarungen zwischen den Durchführungspartnern unterliegen, in denen die Einzelheiten dieser Maßnahmen niedergelegt sind.

(2) Die Vertragsparteien führen vor der Vereinbarung konkreter Entwicklungsmaßnahmen einen partnerschaftlichen Dialog, in dem alle Fragen der Zusammenarbeit in den Mitgliedsstaaten der Afrikanischen Union berücksichtigt werden. Über Ziele, Schwerpunktbereiche der Zusammenarbeit, Entwicklungsmaßnahmen und Durchführungspartner der künftigen Zusammenarbeit wird in Konsultationen und Verhandlungen zwischen den Vertragsparteien Einvernehmen hergestellt.

Artikel 3
Begriffsbestimmungen

Für dieses Abkommen gelten folgende Begriffsbestimmungen:

1. Büros: von den Durchführungsorganisationen eingerichtete Repräsentanzen zur Unterstützung der Durchführung und Steuerung von Entwicklungsmaßnahmen und zur Vertretung der eigenen Organisation;

2. Direktleistungen: Beratung, Aus- und Fortbildung durch den Einsatz von Fachkräften, Leistungen und Lieferungen, die durch die Regierung der Bundesrepublik Deutschland oder eine Durchführungsorganisation direkt erbracht oder in Auftrag gegeben werden;

3. Durchführungsorganisationen: Stellen und Organisationen wie die in Artikel 4 Absatz 3 genannten, die von der Regierung der Bundesrepublik Deutschland mit der Durchführung von Entwicklungsmaßnahmen betraut werden;

4. Durchführungspartner: die Kommission der Afrikanischen Union, andere Gremien, Stellen und Einrichtungen der Afrikanischen Union sowie jede andere Einrichtung oder Organisation, die gemeinsam von den Vertragsparteien ausgewählt werden kann;

5. Durchführungsvereinbarungen: privatrechtliche Verträge, welche die Durchführungsorganisationen mit den Durchführungspartnern auf der Grundlage von Vereinbarungen nach Artikel 4 Absatz 1 schließen, insbesondere Finanzierungsverträge und technische Vereinbarungen;

6. Empfänger: der Anspruchsberechtigte in Bezug auf einen Finanzierungsbeitrag und technischen Beitrag;

7. Entwicklungsmaßnahme: jede Maßnahme im Rahmen der Entwicklungszusammenarbeit;

8. Fachkräfte: Kurz- und Langzeitexperten, Entwicklungshelfer und Integrierte Fachkräfte sowie Entsandte und Eingebundene Fachkräfte;

9. Integrierte Fachkräfte: beim Durchführungspartner angestellte Experten, deren Vergütung durch die Regierung der Bundesrepublik Deutschland aufgestockt wird;

10. Entsandte oder Eingebundene Fachkräfte: Experten, die bei einer Durchführungsorganisation angestellt sind, aber bei einem Durchführungspartner arbeiten;

11. Finanzierung: Finanzierungsbeiträge, Bereitstellung von Finanzmitteln sowie vergleichbare Finanzinstrumente, die im Rahmen der Entwicklungszusammenarbeit durch die Regierung der Bundesrepublik Deutschland über eine Durchführungsorganisation gewährt werden;

12. Finanzierungsbeitrag: nicht verzinsliche und nicht rückzahlbare Finanzierung (Zuschuss);

13. Ortskraft: Lokale Fachkraft, deren Arbeitsvertrag sich, sofern sie bei einer der Durchführungsorganisationen angestellt ist, nach den lokalen arbeitsrechtlichen Bestimmungen richtet;

14. Sitzstaat: Sitzstaaten der Afrikanischen Union sind die Demokratische Bundesrepublik Äthiopien sowie jeder Mitgliedsstaat der Afrikanischen Union, der mit einer Organisation oder einer anderen Einrichtung der Afrikanischen Union ein Sitzstaatsabkommen geschlossen hat und mit dem die Bundesrepublik Deutschland diplomatische Beziehungen unterhält.

Artikel 4
Vereinbarung von Entwicklungsmaßnahmen

(1) Die Vertragsparteien können auf der Grundlage dieses Abkommens ergänzende konkrete Projektvereinbarungen im Rahmen des Völkerrechts schließen.

(2) Die Verpflichtung der Regierung der Bundesrepublik Deutschland zur Erbringung ihrer Leistungen entsteht unter der Voraussetzung, dass die Regierung der Bundesrepublik Deutschland die Förderungswürdigkeit der vorgeschlagenen Entwicklungsmaßnahme festgestellt hat.

(3) Die Regierung der Bundesrepublik Deutschland kann insbesondere folgende Durchführungsorganisationen oder deren Rechtsnachfolger mit der Durchführung einzelner Entwicklungsmaßnahmen beauftragen:

1. die Bundesanstalt für Geowissenschaften und Rohstoffe (BGR);

2. die Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;

3. die Kreditanstalt für Wiederaufbau (KfW) einschließlich der Deutschen Investitions- und Entwicklungsgesellschaft mbH (DEG);

4. die Physikalisch-Technische Bundesanstalt (PTB).

(4) In den Durchführungsvereinbarungen werden verbindliche Regelungen getroffen, insbesondere im Hinblick auf

1. die mit der Entwicklungsmaßnahme und ihrer Finanzierung verfolgten Ziele;

2. der zeitliche Rahmen sowie die organisatorischen und technischen Aspekte der Durchführung der Entwicklungsmaßnahme und ihrer Finanzierung;

3. die von den beteiligten Stellen zu erbringenden Leistungen;

4. das Verfahren der Auftragsvergabe im Falle von Finanzierungen;

5. die Folgen der Verletzung von Vertragspflichten.

Artikel 5
Austausch von Entwicklungsmaßnahmen

Die nach den Artikeln 2 und 4 vereinbarten Entwicklungsmaßnahmen können im Einvernehmen zwischen der Regierung der Bundesrepublik Deutschland und der Kommission der Afrikanischen Union im Wege des Austauschs diplomatischer Noten durch andere Entwicklungsmaßnahmen ersetzt werden.

Artikel 6
Leistungen und Pflichten der Regierung der Bundesrepublik Deutschland

(1) Im Einklang mit Artikel 4 fördert die Regierung der Bundesrepublik Deutschland Entwicklungsmaßnahmen unter anderem durch technische Beiträge und Finanzierungsbeiträge, einschließlich der Vorbereitung, Durchführung und Erfolgskontrolle der Entwicklungsmaßnahmen.

(2) Die Regierung der Bundesrepublik Deutschland und die Durchführungspartner erarbeiten die Modalitäten für die Einbindung von Fachkräften, einschließlich Entsandten Fach-

kräften. Die Regierung der Bundesrepublik Deutschland stellt sicher, dass die Fachkräfte der in Artikel 4 Absatz 3 genannten Durchführungsorganisationen

1. im Rahmen der über ihre Arbeit getroffenen Vereinbarungen nach besten Kräften zur Erreichung der in Artikel 55 der Charta der Vereinten Nationen festgelegten Ziele beitragen;

2. sich nicht in die inneren Angelegenheiten der Afrikanischen Union oder des Sitzstaats, einschließlich Angelegenheiten der Mitgliedschaft, wie sie von der Afrikanischen Union beschlossen wurde, einmischen;

3. die örtlichen Gesetze, Sitten und Gebräuche achten;

4. mit der Afrikanischen Union sowie anderen Gremien, Stellen und Einrichtungen der Afrikanischen Union vertrauensvoll zusammenarbeiten.

(3) Wünscht die Kommission der Afrikanischen Union, dass eine Entsandte oder Eingebundene Fachkraft abberufen wird, so teilt sie dies der Regierung der Bundesrepublik Deutschland rechtzeitig mit. Möchte die Regierung der Bundesrepublik Deutschland eine Entsandte oder Eingebundene Fachkraft abberufen, so teilt sie dies der Kommission der Afrikanischen Union ebenfalls rechtzeitig mit.

(4) Im Fall von Finanzierungsbeiträgen erhalten die Kommission der Afrikanischen Union sowie andere Gremien, Stellen und Einrichtungen der Afrikanischen Union oder weitere, von den Vertragsparteien gemeinsam auszuwählende Empfänger Zuschüsse oder Direktleistungen der Regierung der Bundesrepublik Deutschland über die Durchführungsorganisationen.

Artikel 7
Leistungen und Pflichten der Kommission der Afrikanischen Union

(1) Die Kommission der Afrikanischen Union trägt wie folgt zu den vereinbarten Entwicklungsmaßnahmen bei:

Sie

1. stellt die Erbringung der in den Durchführungsvereinbarungen konkretisierten Partnerleistungen sicher;

2. stellt im Falle von Finanzierungen die ordnungsgemäße und wirtschaftliche Mittelverwendung sicher; hierfür ist sie gegenüber der nach Artikel 4 Absatz 3 beauftragten Durchführungsorganisation rechenschaftspflichtig;

3. stellt gegebenenfalls und im Einklang mit den Durchführungsvereinbarungen im Falle der Bereitstellung von Finanzmitteln die Gesamtfinanzierung sicher;

4. stellt auf eigene Kosten die erforderlichen Grundstücke und Gebäude einschließlich deren Einrichtung zur Verfügung, soweit in den Durchführungsvereinbarungen nicht anders geregelt;

5. trägt die laufenden Kosten der Entwicklungsmaßnahmen, soweit in den Durchführungsvereinbarungen nicht anders geregelt;

6. stellt auf eigene Kosten die erforderlichen Ortskräfte zur Verfügung, soweit in den Durchführungsvereinbarungen nicht anders geregelt;

7. unterstützt, falls erforderlich, Anträge der Durchführungsorganisationen auf Arbeitsgenehmigungen für Beschäftigte, die nicht Staatsangehörige des Sitzstaats sind;

8. unterstützt, falls erforderlich, die Anträge der Büros auf Einrichtung von Telekommunikationsanschlüssen einschließlich Funk- und Satellitenverbindungen.

(2) Zum Zweck der Durchführung von in diesem Abkommen aufgeführten Maßnahmen bemüht sich die Kommission der Afrikanischen Union um die Gewährung angemessener Vorrechte und Immunitäten, Arbeitsgenehmigungen und Visa im Einklang mit dem Zusatzprotokoll vom 3. Juli 1980 zum Allgemeinen Übereinkommen der Organisation für Afrikanische Einheit (OAE) über Vorrechte und Immunitäten sowie gegebenenfalls dem Allge-

meinen Übereinkommen vom 25. Oktober 1965 über die Vorrechte und Immunitäten der Organisation für Afrikanische Einheit (OAE). Es wird davon ausgegangen, dass der Sitzstaat Vorrechte und Immunitäten nach eigenem Ermessen in Übereinstimmung mit seinen Gesetzen und sonstigen Vorschriften gewährt. Dazu können gehören:

1. die Befreiung von direkten Steuern, die in dem Mitgliedsstaat erhoben werden, in dem Maßnahmen im Rahmen dieses Abkommens durchgeführt werden;

2. gegebenenfalls die Rückerstattung der Mehrwertsteuer und vergleichbarer indirekter Steuern auf im Zusammenhang mit dem Vorhaben beschaffte Waren oder genutzte Dienstleistungen; gegebenenfalls die Rückerstattung bestimmter Verbrauchssteuern, die in den Mitgliedsstaaten im Zusammenhang mit dem Vorhaben erhoben wurden;

3. gegebenenfalls die Befreiung von Zollabgaben auf im Zusammenhang mit einem Vorhaben eingeführte Materialien und Fahrzeuge.

Artikel 8
Beilegung von Streitigkeiten

Streitigkeiten und Meinungsverschiedenheiten, die sich aus der Auslegung oder Anwendung dieses Abkommens ergeben, werden durch die Vertragsparteien im Rahmen eines partnerschaftlichen Dialogs einvernehmlich beigelegt.

Artikel 9
Vorrechte und Immunitäten der Vertragsparteien

Dieses Abkommen berührt nicht die Vorrechte und Immunitäten, die den Vertragsparteien im Rahmen des Völkerrechts gewährt werden.

Artikel 10
Inkrafttreten

Dieses Abkommen tritt am Tag seiner Unterzeichnung in Kraft.

Artikel 11
Änderungen

Dieses Abkommen kann einvernehmlich durch die Vertragsparteien geändert werden.

Geschehen zu Addis Abeba am 13. Juli 2015
in zwei Urschriften, jede in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Für die Regierung der
Bundesrepublik Deutschland

Für die Kommission der
Afrikanischen Union

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE ET LA COMMISSION DE L'UNION AFRICAINE CONCERNANT LA COOPÉRATION POUR LE DÉVELOPPEMENT

Le Gouvernement de la République fédérale d'Allemagne et la Commission de l'Union africaine, ci-après conjointement dénommés les « Parties contractantes »,

Dans l'esprit des relations amicales qui existent entre la République fédérale d'Allemagne et l'Union africaine,

Désireux de consolider et d'approfondir ces relations amicales par une coopération pour le développement dans un esprit de partenariat,

Conscients que le maintien de ces relations constitue la base du présent Accord,

Déterminés à contribuer au développement politique, social et économique de l'Union africaine,

Sont convenus de ce qui suit :

Article premier. Objectifs de la coopération

L'objectif de la conclusion du présent Accord par les Parties contractantes est de coopérer en vue de promouvoir l'intégration économique et politique de l'Union africaine, de préserver la paix et la sécurité, de favoriser la démocratie et les droits de l'homme et de parvenir à un développement durable à l'échelle mondiale qui se traduise équitablement par des performances économiques, la justice sociale, la viabilité environnementale et la stabilité politique.

Article 2. Base de la coopération

1) Cette coopération est régie par les principes, les procédures et les obligations convenus dans le présent Accord ; ceux-ci constitueront la base des accords conclus entre les Parties contractantes sur les mesures ciblées de développement qui seront régies par des notes diplomatiques et des arrangements d'exécution établis entre les partenaires d'exécution en vertu du droit privé, fixant tous deux les détails de ces mesures.

2) Avant de finaliser tout accord sur les mesures ciblées de développement, les Parties contractantes procèdent à un dialogue dans un esprit de partenariat en tenant compte de toutes les problématiques liées à la coopération dans les États membres de l'Union africaine. Les objectifs, les domaines de coopération prioritaires, les mesures de développement et les partenaires d'exécution de toute future coopération sont convenus dans le cadre de consultations et de négociations entre les Parties contractantes.

Article 3. Définitions

Aux fins du présent Accord :

1. Le terme « bureaux » désigne les représentations mises en place par les organismes d'exécution pour appuyer la mise en œuvre et le pilotage des mesures de développement et pour assurer leur représentation ;

2. L'expression « contributions directes » désigne les conseils, la formation de base et la formation avancée dispensés grâce aux experts, aux contributions et au matériel directement mis à disposition par le Gouvernement de la République fédérale d'Allemagne ou un organisme d'exécution, ou à la demande de ces derniers ;

3. L'expression « organismes d'exécution » désigne les agences et organismes tels que ceux visés au paragraphe 3 de l'article 4 du présent Accord chargés par le Gouvernement de la République fédérale d'Allemagne de la mise en œuvre des mesures de développement ;

4. L'expression « partenaires d'exécution » désigne la Commission de l'Union africaine ainsi que les autres organes, agences et institutions de l'Union africaine, et toute autre institution ou organisation qui pourrait être conjointement sélectionnée par les Parties contractantes ;

5. L'expression « arrangements d'exécution » désigne les contrats de droit privé conclus par les organismes d'exécution avec les partenaires d'exécution sur la base d'accords conclus en vertu du paragraphe 1 de l'article 4 du présent Accord, notamment les accords relatifs au financement et au soutien technique ;

6. Le terme « destinataire » désigne l'entité bénéficiaire d'une contribution financière et technique ;

7. L'expression « mesure de développement » désigne toute mesure relevant du champ d'application de la coopération pour le développement ;

8. Le terme « experts » désigne les experts à court et à long terme, les conseillers en développement et les experts intégrés, ainsi que les experts détachés et rattachés ;

9. L'expression « experts intégrés » désigne les experts employés par le partenaire d'exécution, dont la rémunération est complétée par le Gouvernement de la République fédérale d'Allemagne ;

10. L'expression « experts détachés ou rattachés » désigne les experts employés par un organisme d'exécution, mais travaillant avec un partenaire d'exécution ;

11. Le terme « financement » désigne les contributions financières, la mise à disposition de fonds et d'instruments financiers similaires accordées par le Gouvernement de la République fédérale d'Allemagne par l'intermédiaire d'un organisme d'exécution dans le cadre de la coopération pour le développement ;

12. L'expression « contribution financière » désigne un financement non remboursable (subvention) sans intérêt ;

13. L'expression « agents locaux » désigne les experts locaux employés par l'un des organismes d'exécution, dont le contrat de travail est régi par les dispositions du droit du travail local ;

14. L'expression « pays hôtes » désigne les pays hôtes de l'Union africaine, soit la République fédérale démocratique d'Éthiopie et tous les États membres de l'Union africaine qui ont conclu un accord de siège avec une organisation ou une autre institution de l'Union africaine et avec lesquels la République fédérale d'Allemagne entretient des relations diplomatiques.

Article 4. Accord sur les mesures de développement

1) Les Parties contractantes peuvent, sur la base du présent Accord, conclure des accords de projet ciblés complémentaires conformément au droit international.

2) L'obligation du Gouvernement de la République fédérale d'Allemagne de verser ses contributions prend effet lorsque celui-ci constate que la mesure de développement proposée a été jugée admissible au bénéfice de l'aide.

3) Le Gouvernement de la République fédérale d'Allemagne peut notamment mandater les organismes d'exécution suivants, ou leurs successeurs légaux, pour mettre en œuvre des mesures de développement individuelles :

1. L'Institut fédéral des géosciences et des ressources naturelles (BGR) ;
2. L'Agence allemande de coopération internationale ;
3. La Banque pour la reconstruction (KfW), dont notamment la Société allemande d'investissement et de développement (DEG) ;
4. L'Institut national de métrologie d'Allemagne (PTB).

4) Les arrangements d'exécution contiennent des dispositions contraignantes, notamment en ce qui concerne :

1. Les objectifs à atteindre par l'intermédiaire de la mesure de développement et de son financement ;
2. Le calendrier et les aspects organisationnels et techniques de la mise en œuvre de la mesure de développement et de son financement ;
3. Les contributions à fournir par les agences concernées ;
4. En ce qui concerne les financements, la procédure de passation des marchés ;
5. Les implications en cas de violation des obligations contractuelles.

Article 5. Remplacement des mesures de développement

Les mesures de développement convenues au titre de l'article 2 et de l'article 4 du présent Accord peuvent être remplacées par d'autres mesures de développement au moyen d'un échange de notes diplomatiques, lorsque le Gouvernement de la République fédérale d'Allemagne et la Commission de l'Union africaine en conviennent.

Article 6. Contributions et obligations du Gouvernement de la République fédérale d'Allemagne

1) Conformément à l'article 4 du présent Accord, le Gouvernement de la République fédérale d'Allemagne soutient les mesures de développement, notamment par des contributions techniques et financières, y compris en matière de préparation, de mise en œuvre et d'évaluation des mesures de développement.

2) Le Gouvernement de la République fédérale d'Allemagne et les partenaires d'exécution définissent les modalités de recrutement des experts, y compris des experts détachés. Le Gouvernement veille à ce que les experts des organismes d'exécution visés au paragraphe 3 de l'article 4 du présent Accord :

1. Mettent tout en œuvre, selon les modalités de travail convenues, pour contribuer à la réalisation des objectifs énoncés à l'Article 55 de la Charte des Nations Unies ;
2. Ne s'immiscent pas dans les affaires intérieures du pays hôte, ou de l'Union africaine, et en particulier ne se prononcent pas sur son statut de membre tel que défini par l'Union africaine ;
3. Respectent les lois et les coutumes locales ;
4. Coopèrent dans un esprit de confiance mutuelle avec l'Union africaine et les autres organes, agences et institutions de l'Union africaine.

3) Si la Commission de l'Union africaine souhaite qu'un expert détaché ou rattaché soit rappelé, elle en informe le Gouvernement de la République fédérale d'Allemagne en temps utile. De même, si le Gouvernement de la République fédérale d'Allemagne souhaite rappeler un expert détaché ou rattaché, il en informe également la Commission de l'Union africaine en temps utile.

4) Dans le cas de contributions financières, la Commission de l'Union africaine ainsi que les autres organes, agences et institutions de l'Union africaine, ou les autres destinataires tel que convenu conjointement par les Parties contractantes, reçoivent des subventions ou des contributions directes du Gouvernement de la République fédérale d'Allemagne par l'intermédiaire des organismes d'exécution.

Article 7. Contributions et obligations de la Commission de l'Union africaine

1) La Commission de l'Union africaine contribue aux mesures de développement convenues comme suit :

1. Elle assure la mise à disposition des contributions de contrepartie précisées dans les arrangements d'exécution ;
2. Elle veille, en cas de financement, à ce que les fonds soient utilisés de manière appropriée et économique, responsable ce faisant devant l'organisme d'exécution concerné conformément au paragraphe 3 de l'article 4 du présent Accord ;
3. Elle assure, si nécessaire, le financement global conformément aux arrangements d'exécution en vertu desquels les fonds sont mis à disposition ;
4. Elle met à disposition, à ses frais, les terrains et bâtiments nécessaires, y compris le mobilier, sauf disposition contraire des contrats d'exécution ;
5. Elle couvre les frais de fonctionnement des mesures de développement, sauf disposition contraire des arrangements d'exécution ;
6. Elle met à disposition, à ses frais, les agents locaux nécessaires, sauf disposition contraire des contrats d'exécution ;
7. Elle soutient, si nécessaire, les demandes de permis de travail présentées par les organismes d'exécution pour le personnel qui n'est pas ressortissant du pays hôte ;
8. Elle soutient, si nécessaire, les demandes des bureaux pour l'installation de liaisons de télécommunication, y compris des services de radio et de satellite.

2) Aux fins de la mise en œuvre des mesures énumérées dans le présent Accord, la Commission de l'Union africaine s'efforce de faciliter l'octroi de privilèges et d'immunités appropriés, de permis de travail et de visas conformément au Protocole additionnel à la Convention générale sur les privilèges et immunités de l'OUA du 3 juillet 1980 ainsi qu'à la

Convention générale sur les privilèges et immunités de l'Organisation de l'Unité africaine (OUA) du 25 octobre 1965, le cas échéant. Il est entendu qu'il appartient au pays hôte d'accorder des privilèges et immunités conformément à sa législation et à sa réglementation. Ceux-ci peuvent notamment inclure :

1. L'exonération des impôts directs perçus dans l'État membre où des mesures sont mises en œuvre dans le cadre du présent Accord ;
2. Le remboursement de la TVA et des taxes indirectes similaires, le cas échéant, sur les biens acquis ou sur les services utilisés dans le cadre du projet et, s'il y a lieu, le remboursement des droits d'accise perçus dans les États membres dans le cadre du projet ;
3. L'exonération des droits de douane sur les équipements et les véhicules à moteur importés dans le cadre d'un projet, le cas échéant.

Article 8. Règlement des différends

Les Parties contractantes règlent les différends ou les divergences d'opinions résultant de l'interprétation ou de l'application du présent Accord par consentement mutuel dans le cadre d'un dialogue fondé sur le partenariat.

Article 9. Privilèges et immunités des Parties contractantes

Aucune disposition du présent Accord n'a d'incidence sur les privilèges et immunités accordés aux Parties contractantes en vertu du droit international.

Article 10. Entrée en vigueur

Le présent Accord entre en vigueur à la date de sa signature.

Article 11. Modifications

Les dispositions du présent Accord peuvent être modifiées sous réserve de l'accord des Parties contractantes.

FAIT à Addis-Abeba, le 13 juillet 2015, en double exemplaire en langues allemande et anglaise, les deux textes faisant également foi.

Pour le Gouvernement de la République fédérale d'Allemagne :

[JOACHIM SCHMIDT]

Pour la Commission de l'Union africaine :

[NKOSAZANA DLAMINI-ZUMA]

No. 53778

Germany
and
China

Agreement between the Federal Republic of Germany and the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (with protocol and corrections). Berlin, 28 March 2014

Entry into force: *6 April 2016, in accordance with article 32*

Authentic texts: *Chinese, English and German*

Registration with the Secretariat of the United Nations: *Germany, 22 July 2016*

Allemagne
et
Chine

Accord entre la République fédérale d'Allemagne et la République populaire de Chine tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole et corrections). Berlin, 28 mars 2014

Entrée en vigueur : *6 avril 2016, conformément à l'article 32*

Textes authentiques : *chinois, anglais et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 22 juillet 2016*

[TEXT IN CHINESE – TEXTE EN CHINOIS]

德意志联邦共和国和中华人民共和国
对所得和财产避免双重征税和防止偷漏税的协定

德意志联邦共和国和中华人民共和国，愿意缔结对所得避免双重征税和防止偷漏税的协定，达成协议如下：

第一条 人的范围

本协定适用于缔约国一方或者同时为双方居民的人。

第二条 税种范围

一、本协定适用于由缔约国一方或其地方当局对所得和财产征收的税收，不论其征收方式如何。

二、对全部所得、全部财产或对某项所得或某项财产征收的税收，包括对来自转让动产或不动产的收益征收的税收、对企业支付的全部工资薪金征收的税收以及对资本增值征收的税收，应视为对所得和财产征收的税收。

三、本协定适用的现行税种是：

（一） 在中国：

1.个人所得税；

2.企业所得税；

（以下称中国税收）；

（二）在德意志联邦共和国：

1. 个人所得税；

2. 企业所得税；

3. 贸易税；以及

4. 财产税；

包括以上税种的附加税种

（以下称德国税收）。

四、本协定也适用于本协定签订之日后征收的属于新增加的或者代替现行税种的相同或者实质相似的税收。缔约国双方主管当局应将各自税法发生的重要变动通知对方。

第三条 一般定义

一、在本协定中，除上下文另有解释外：

（一）“中国”一语是指中华人民共和国；用于地理概念时，是指所有适用中国有关税收法律的中华人民共和国领土，包括领海，以及根据国际法及其国内法，中华人民共和国拥有勘探和开发海底和底土资源以及海底以上水域资源主权权利的领海以外的区域；

（二）“德国”一语是指德意志联邦共和国；用于地理概念时，是指德意志联邦共和国的领土以及德意志联邦共和国为勘探、开发、保护和管理生物和非生物自然资源的目的、根据国际法和国内法行使主权权利和管辖权的海底、底土和临近其领海的海底以上水域；

（三）“缔约国一方”和“缔约国另一方”的用语，根据上下文的要求，是指中国或者德意志联邦共和国；

（四）“人”一语包括个人、公司和其他团体；

（五）“公司”一语是指法人团体或者在税收上视同法人团体的实体；

（六）“缔约国一方企业”和“缔约国另一方企业”的用语，分别指缔约国一方居民经营的企业和缔约国另一方居民经营的企业；

（七）“国际运输”一语是指在缔约国一方设有实际管理机构的企业以船舶或飞机经营的运输，不包括仅在缔约国另一方各地之间以船舶或飞机经营的运输；

（八）“国民”一语是指：

1、 在德意志联邦共和国，

德意志联邦共和国基本法所指的任何德国人和任何按照德意志联邦共和国现行法律成立的法人、合伙企业或团体；

2、在中国，

任何拥有中华人民共和国国籍的个人和任何按照中华人民共和国现行法律成立的法人、合伙企业或团体；

（九）“主管当局”一语是指：

1.在中国,国家税务总局或其授权的代表；

2.在德意志联邦共和国,联邦财政部或其授权的机构。

二、缔约国一方在实施本协定的任何时候，对于未经本协定明确定义的用语，除上下文另有要求的以外，应当具有协定实施时该国适用于本协定的税种的法律所规定的含义，此用语在该国有效适用的税法上的含义优先于在该国其他法律上的含义。

第四条 居民

一、在本协定中，“缔约国一方居民”一语是指按照该缔约国法律，由于住所、居所、成立地、实际管理机构所在地，或者其他类似的标准，在该缔约国负有纳税义务的人，并且包括该缔约国及其地方当局。但是，这一用语不包括仅因来源于该缔约国的所得或坐落于该缔约国的财产而在该缔约国负有纳税义务的人。

二、由于第一款的规定，同时为缔约国双方居民的个人，其身份应按以下规则确定：

（一）应认为仅是其永久性住所所在国的居民；如果在缔约国双方同时有永久性住所，应认为仅是与其个人和经济关系更密切（重要利益中心）的缔约国的居民；

（二）如果其重要利益中心所在国无法确定，或者在缔约国任何一方都没有永久性住所，应认为仅是其习惯性居处所在国家的居民；

（三）如果其在缔约国双方都有或者都没有习惯性居处，应认为仅是其国籍所属国家的居民；

（四）如果发生双重国籍问题，或者其不是缔约国任何一方的国民，缔约国双方主管当局应通过协商解决。

三、由于第一款的规定，除个人以外，同时为缔约国双方居民的人，应认为仅是其实际管理机构所在国家的居民。

第五条 常设机构

一、在本协定中，“常设机构”一语是指企业进行全部或部分营业的固定营业场所。

二、“常设机构”一语特别包括：

（一）管理场所；

（二）分支机构；

（三）办事处；

（四）工厂；

（五）作业场所；以及

（六）矿场、油井或气井、采石场或者其他开采自然资源的场所。

三、“常设机构”一语还包括：

（一）建筑工地，建筑、装配或安装工程，或者与其有关的监督管理活动，但仅以该工地、工程或活动连续超过12个月的为限；

（二）缔约国一方企业通过雇员或雇用的其他人员在缔约国另一方提供劳务，包括咨询劳务，但仅以该性质的活动（为同一或相关联的项目）在任何12个月中连续或累计超过183天的为限。

四、虽有本条上述规定，“常设机构”一语应认为不包括：

（一）专为储存、陈列或者交付本企业货物或者商品的目的而使用的设施；

（二）专为储存、陈列或者交付的目的而保存本企业货物或者商品的库存；

（三）专为由另一企业加工的目的而保存本企业货物或者商品

的库存；

（四）专为本企业采购货物或者商品，或者搜集信息的目的所设的固定营业场所；

（五）专为本企业进行其他准备性或辅助性活动的目的所设的固定营业场所；

（六）专为本款第（一）项至第（五）项活动的任意结合所设的固定营业场所，条件是这种结合使该固定营业场所的全部活动属于准备性质或辅助性质。

五、虽有第一款和第二款的规定，当一个人（除适用第六款规定的独立地位代理人以外）在缔约国一方代表缔约国另一方的企业进行活动，有权以该企业的名义签订合同并经常行使这种权力，这个人为该企业进行的任何活动，应认为该企业在该缔约国一方设有常设机构，除非这个人通过固定营业场所进行的活动限于第四款的规定。按照该款规定，不应认为该固定营业场所是常设机构。

六、缔约国一方企业仅通过按常规经营本身业务的经纪人、一般佣金代理人或者任何其他独立地位代理人在缔约国另一方进行营业，不应认为在该缔约国另一方设有常设机构。但如果该代理人的活动全部或几乎全部代表该企业，且企业和代理人之间的商业和财务关系不同于非关联企业之间应有的关系，则不应认为是本款所指的独立地位代理人。

七、缔约国一方的居民公司，控制或被控制于缔约国另一方的居民公司或者在该缔约国另一方进行营业的公司（不论是否通过常设机构），仅凭此项事实不能使任何一方公司构成另一方公司的常设机构。

第六条 不动产所得

一、缔约国一方居民从位于缔约国另一方的不动产取得的所得(包括农业或林业所得)，可以在该缔约国另一方征税。

二、“不动产”一语应当具有财产所在地的缔约国的法律所规定的含义。该用语在任何情况下应包括附属于不动产的财产，农业和林业所使用的牲畜和设备，有关地产的一般法律规定所适用的权利，不动产的用益权以及由于开采或有权开采矿藏、水源和其他自然资源取得的不固定或固定收入的权利。船舶和飞机不应视为不动产。

三、第一款的规定应适用于从直接使用、出租或者以任何其他形式使用不动产取得的所得。

四、第一款和第三款的规定也适用于企业的不动产所得和用于进行独立个人劳务的不动产所得。

第七条 营业利润

一、缔约国一方企业的利润应仅在该缔约国征税，但该企业通过设在缔约国另一方的常设机构在缔约国另一方进行营业的除外。如果该企业通过设在缔约国另一方的常设机构在缔约国另一方进行营业,则其利润可以在缔约国另一方征税，但应仅以归属于该常设机构的利润为限。

二、除适用本条第三款的规定以外，缔约国一方企业通过设在

缔约国另一方的常设机构在缔约国另一方进行营业，应将该常设机构视同在相同或类似情况下从事相同或类似活动的独立分设企业，并同该常设机构所隶属的企业完全独立处理，该常设机构可能得到的利润在缔约国双方应归属于该常设机构。

三、在确定常设机构的利润时，应当允许扣除为常设机构营业目的发生的各项费用，包括行政和一般管理费用，不论其发生于该常设机构所在国还是其他地方。

四、如果缔约国一方习惯于以企业总利润按一定比例分配给所属各单位的方法来确定常设机构的利润，则第二款规定并不妨碍该缔约国一方按这种习惯分配方法确定其应税利润。但是，采用的分配方法所得到的结果，应与本条所规定的原则一致。

五、不应仅由于常设机构为本企业采购货物或商品，而将利润归属于该常设机构。

六、在执行上述各款时，除有适当的和充分的理由需要变动外，每年应采用相同的方法确定归属于常设机构的利润。

七、利润中如果包括本协定其他各条单独规定的所得项目时，本条规定不应影响其他各条的规定。

第八条 海运和空运

一、以船舶或飞机经营国际运输取得的利润，应仅在企业实际管理机构所在的缔约国征税。

二、在本条中，以船舶或飞机经营国际运输业务取得的利润包括：

（一）以光租形式出租船舶或飞机取得的利润；以及

（二）使用、保养或出租用于运输货物或商品的集装箱（包括拖车和运输集装箱相关的设备）取得的利润；

上述使用、保养或出租，应为以船舶或飞机经营的国际运输业务的附属活动。

三、如果船运企业的实际管理机构设在船舶上，应以船舶母港所在缔约国为所在国；没有母港的，应以船舶经营者为其居民的缔约国为所在国。

四、第一款的规定也适用于参加合伙经营、联合经营或者国际经营机构取得的利润。

第九条 关联企业

一、在下列任何一种情况下：

（一）缔约国一方企业直接或者间接参与缔约国另一方企业的管理、控制或资本，或者

（二）相同的人直接或者间接参与缔约国一方企业和缔约国另一方企业的管理、控制或资本，

两个企业之间商业或财务关系中确定或施加的条件不同于独立企业之间应确定的条件，并且由于这些条件的存在，导致其中一个企业没有取得其本应取得的利润，则可以将这部分利润计入该企业的所得，并据以征税。

二、缔约国一方将缔约国另一方已征税的企业利润——在两个企业之间的关系是独立企业之间关系的情况下，这部分利润本应由

该缔约国一方企业取得——包括在该缔约国一方企业的利润内征税时，缔约国另一方应对这部分利润所征收的税额加以调整。在确定调整时，应对本协定其他规定予以注意。如有必要，缔约国双方主管当局应相互协商。

第十条 股息

一、缔约国一方居民公司支付给缔约国另一方居民的股息，可以在缔约国另一方征税。

二、然而，这些股息也可以在支付股息的公司是其居民的缔约国，按照该缔约国的法律征税。但是，如果股息受益所有人是缔约国另一方居民，则所征税款：

（一）在受益所有人是公司（合伙企业除外），并直接拥有支付股息的公司至少25%资本的情况下，不应超过股息总额的5%；

（二）如果据以支付股息的所得或收益由投资工具直接或间接从投资于第六条所规定的不动产所取得，在该投资工具按年度分配大部分上述所得或收益，且其来自于上述不动产的所得或收益免税的情况下，不应超过股息总额的15%；

（三）在其他情况下，不应超过股息总额的10%。

本款不应影响对该公司支付股息前的利润征税。

三、本条“股息”一语是指从股份或者非债权关系分享利润的其他权利取得的所得，以及按照分配利润的公司是其居民的缔约国法律，视同股份所得同样征税的其他公司权利取得的所得。

四、如果股息受益所有人作为缔约国一方居民，在支付股息的

公司是其居民的缔约国另一方，通过设在缔约国另一方的常设机构进行营业或者通过设在缔约国另一方的固定基地从事独立个人劳务，据以支付股息的股份与该常设机构或固定基地有实际联系的，不适用第一款和第二款的规定。在这种情况下，应视具体情况适用第七条或第十四条的规定。

五、缔约国一方居民公司从缔约国另一方取得利润或所得，该缔约国另一方不得对该公司支付的股息征税，也不得对该公司的未分配利润征税，即使支付的股息或未分配利润全部或部分是发生于缔约国另一方的利润或所得。但是，支付给缔约国另一方居民的股息或者据以支付股息的股份与设在缔约国另一方的常设机构或固定基地有实际联系的除外。

第十一条 利息

一、发生于缔约国一方而支付给缔约国另一方居民的利息，可以在该缔约国另一方征税。

二、然而，这些利息也可以在其发生的缔约国，按照该缔约国的法律征税。但是，如果利息受益所有人是缔约国另一方居民，则所征税款不应超过利息总额的10%。

三、虽有第二款的规定，

（一）发生于缔约国一方而支付给缔约国另一方政府的利息应在缔约国一方免税；

（二）发生于缔约国一方而因缔约国另一方或其全资拥有的任何金融机构担保或保险的贷款而支付的利息，应在缔约国一方免税；

（三）发生于中国而支付给德意志联邦银行、重建贷款银行、德国投资与开发公司以及缔约国双方主管当局同意的、由德意志联邦共和国拥有的任何其他公共信贷机构的利息，应在中国免税；

（四）发生于德意志联邦共和国而支付给下列机构的利息，应在德国免税：

1. 中国人民银行；

2. 国家开发银行股份有限公司；

3. 中国农业发展银行；

4. 中国进出口银行；

5. 全国社会保障基金理事会；

6. 中国投资有限责任公司，以及

7. 缔约国双方主管当局同意的、由中国政府拥有的任何其他公共信贷机构。

四、虽有本条第二款的规定，如果收款人是第一款所述利息的受益所有人，且利息的支付与赊销商业设备或科学设备有关，则该利息可以仅在收款人为其居民的缔约国一方征税。

五、本条“利息”一语是指从各种债权取得的所得，不论其有无抵押担保；特别是从公债、债券或者信用债券取得的所得，包括其溢价和奖金。由于延期支付而产生的罚款不应视为本条所规定的利息。

六、如果利息受益所有人作为缔约国一方居民，在利息发生的缔约国另一方，通过设在该缔约国另一方的常设机构进行营业或者通过设在该缔约国另一方的固定基地从事独立个人劳务，据以支付该利息的债权与该常设机构或者固定基地有实际联系的，不适用第一

款至第四款的规定。在这种情况下，应视具体情况适用第七条或第十四条的规定。

七、如果支付利息的人是缔约国一方居民，应认为该利息发生在该缔约国。然而，如果支付利息的人——不论是否为缔约国一方居民——在缔约国一方设有常设机构或者固定基地，支付该利息的债务与该常设机构或者固定基地有联系，并由其负担该利息，上述利息应认为发生于该常设机构或固定基地所在的缔约国。

八、由于支付利息的人与受益所有人之间或者他们与其他人之间的特殊关系，就有关债权所支付的利息数额超出支付人与受益所有人没有上述关系所能同意的数额时，本条规定应仅适用于在没有上述关系情况下所能同意的数额。在这种情况下，对该支付款项的超出部分，仍应按各缔约国的法律征税，但应对本协定其他规定予以适当注意。

第十二条 特许权使用费

一、发生于缔约国一方而由缔约国另一方居民受益所有的特许权使用费，可以在该缔约国另一方征税。

二、然而，上述特许权使用费也可以在其发生的缔约国一方，按照该国的法律征税。但是，如果特许权使用费的受益所有人是缔约国另一方居民，则所征税款不应超过：

（一）第三款第（一）项所指特许权使用费总额的10%；

（二）第三款第（二）项所指特许权使用费调整数额的10%。该项“调整数额”是指特许权使用费总额的60%。

三、本条“特许权使用费”一语是指：

（一）为使用或有权使用文学、艺术或科学著作（包括电影影片、无线电或电视广播使用的胶片、磁带）的版权，任何专利、商标、设计或模型、图纸、秘密配方或秘密程序所支付的作为报酬的各种款项，或者为有关工业、商业、科学经验的信息（专有技术）所支付的作为报酬的各种款项；

（二）为使用或有权使用工业、商业、科学设备所支付的作为报酬的各种款项。

四、如果特许权使用费受益所有人作为缔约国一方居民，在特许权使用费发生的缔约国另一方，通过设在该缔约国另一方的常设机构进行营业或者通过设在该缔约国另一方的固定基地从事独立个人劳务，据以支付该特许权使用费的权利或财产与该常设机构或固定基地有实际联系的，不适用第一款和第二款的规定。在这种情况下，应视具体情况适用第七条或第十四条的规定。

五、如果支付特许权使用费的人是缔约国一方居民，应认为该特许权使用费发生在该缔约国。然而，如果支付特许权使用费的人——不论是否为缔约国一方居民——在缔约国一方设有常设机构或者固定基地，支付该特许权使用费的义务与该常设机构或者固定基地有联系，并由其负担该特许权使用费，上述特许权使用费应认为发生于该常设机构或者固定基地所在的缔约国。

六、由于支付特许权使用费的人与受益所有人之间或他们与其他人之间的特殊关系，就有关使用、权利或信息所支付的特许权使用费数额超出支付人与受益所有人没有上述关系所能同意的数额时，本条规定应仅适用于在没有上述关系情况下所能同意的数额。

在这种情况下，对该支付款项的超出部分，仍应按各缔约国的法律征税，但应对本协定其他规定予以适当注意。

第十三条 财产收益

一、缔约国一方居民转让第六条所述位于缔约国另一方的不动产取得的收益，可以在该缔约国另一方征税。

二、转让缔约国一方企业在缔约国另一方的常设机构营业财产部分的动产、或者缔约国一方居民在缔约国另一方从事独立个人劳务的固定基地的动产取得的收益，包括转让常设机构（单独或者随同整个企业）或者固定基地取得的收益，可以在该缔约国另一方征税。

三、缔约国一方企业转让从事国际运输的船舶或飞机，或者转让与上述船舶或飞机的运营相关的动产取得的收益，应仅在该企业实际管理机构所在的缔约国征税。

四、缔约国一方居民转让股份取得的收益，如果该股份价值的50%（不含）以上直接或间接来自位于缔约国另一方的不动产，可以在该缔约国另一方征税。

五、缔约国一方居民转让其在缔约国另一方居民公司的股份取得的收益，如果该居民在转让行为前的12个月内，曾经直接或间接拥有该公司至少25%的股份，可以在该缔约国另一方征税。但是，在被认可的证券交易所进行实质和正规交易的股票除外，前提是该居民在转让行为发生的纳税年度内所转让股票的总额不超过上市股票的3%。

六、转让第一款至第五款所述财产以外的其他财产取得的收益，应仅在转让者为其居民的缔约国一方征税。

第十四条 独立个人劳务

一、缔约国一方居民由于专业性劳务或者其他独立性活动取得的所得，应仅在该缔约国征税。但具有以下情况之一的，可以在缔约国另一方征税：

（一）在缔约国另一方为从事上述活动设有经常使用的固定基地。在这种情况下，缔约国另一方可以仅对归属于该固定基地的所得征税；

（二）在有关纳税年度开始或结束的任何12个月内在缔约国另一方停留连续或累计达到或超过183天。在这种情况下，缔约国另一方可以仅对在该缔约国进行活动取得的所得征税。

二、“专业性劳务”一语特别包括独立的科学、文学、艺术、教育或教学活动，以及医师、律师、工程师、建筑师、牙医师和会计师的独立活动。

第十五条 受雇所得

一、除适用第十六条、第十八条和第十九条的规定外，缔约国一方居民因受雇取得的薪金、工资和其他类似报酬，除在缔约国另一方从事受雇的活动以外，应仅在该缔约国一方征税。在缔约国另一方从事受雇活动取得的报酬，可以在该缔约国另一方征税。

二、虽有第一款的规定，缔约国一方居民因在缔约国另一方从事受雇活动取得的报酬，同时具有以下三个条件的，应仅在该缔约国一方征税：

（一）收款人在有关纳税年度开始或结束的任何12个月内在缔约国另一方停留连续或累计不超过183天；

（二）该项报酬由并非缔约国另一方居民的雇主支付或代表该雇主支付；

（三）该项报酬不是由雇主设在缔约国另一方的常设机构或固定基地所负担。

三、虽有本条上述规定，在经营国际运输的船舶或飞机上受雇而取得的报酬，可以在经营该船舶或飞机的企业实际管理机构所在的缔约国征税。

第十六条 董事费

缔约国一方居民作为缔约国另一方居民公司的董事会成员取得的董事费和其他类似款项，可以在缔约国另一方征税。

第十七条 演艺人员和运动员

一、虽有第七条、第十四条和第十五条的规定，缔约国一方居民作为表演家，如戏剧、电影、广播或电视艺术家或音乐家，或作为运动员，在缔约国另一方从事个人活动取得的所得，可以在缔约国另一方征税。

二、表演家或运动员从事个人活动取得的所得，未归属于表演家或运动员本人，而归属于其他人时，虽有第七条、第十四条和第十五条的规定，该所得仍可以在该表演家或运动员从事其活动的缔约国征税。

三、虽有第一款和第二款的规定，作为缔约国一方居民的表演家或运动员在缔约国另一方按照缔约国双方政府的文化交流计划进行活动取得的所得，在该缔约国另一方应予免税。

第十八条 退休金

一、除适用第十九条第二款的规定外，由缔约国一方支付给缔约国另一方居民的退休金、其他类似报酬或年金，应仅在该缔约国另一方征税。

二、虽有第一款的规定，按缔约国一方政府或其地方当局的社会保险制度中的公共计划支付的退休金和其他类似款项，应仅在该缔约国一方征税。

第十九条 政府服务

一、（一）缔约国一方或其地方当局对向其提供服务的个人支付退休金以外的薪金、工资或其他类似报酬，应仅在该缔约国一方征税。

（二）但是，如果该项服务是在缔约国另一方提供，而且提供

服务的个人是该缔约国另一方居民，并且该居民：

1. 是该缔约国另一方国民；或者

2. 不是仅由于提供该项服务而成为该缔约国另一方居民的，

该项薪金、工资或其他类似报酬应仅在该缔约国另一方征税。

二、（一）虽有第一款的规定，缔约国一方或其地方当局支付或者从其建立的基金中支付给向其提供服务的个人的退休金和其他类似报酬，应仅在该缔约国一方征税。

（二）但是，如果提供服务的个人是缔约国另一方居民，并且是其国民的，该项退休金和其他类似报酬应仅在该缔约国另一方征税。

三、第十五条、第十六条、第十七条和第十八条的规定，应适用于向缔约国一方政府或其地方当局举办的事业提供服务取得的薪金、工资、退休金和其他类似报酬。

第二十条 客座教授、教师和学生

一、如果某个人是缔约国一方居民，或者在紧接前往缔约国另一方之前曾是缔约国一方居民，受到缔约国另一方或其大学、学院、学校、博物馆或其他文化机构的邀请或由于官方的文化交流项目，仅为在以上机构从事教学、讲座或研究的目的而在缔约国另一方停留不超过两年的，该缔约国另一方应对其由于上述活动而取得的来源于缔约国另一方以外的报酬免税。如果其停留的时间超过了两年，

自其前往缔约国另一方起由于上述活动而取得的报酬可以在该缔约国另一方征税。

二、如果某项研究工作不是服务于公共利益，而主要是为了某个人或某些人的私利，第一款的规定不适用于从该项研究取得的所得。

三、如果学生或学徒是缔约国一方居民，或者在紧接前往缔约国另一方之前曾是缔约国一方居民，仅由于接受教育或培训的目的停留在该缔约国另一方，对其为了维持生活、接受教育或培训的目的而收到的来源于该缔约国另一方以外的款项，该缔约国另一方应免予征税。

第二十一条 其他所得

一、由缔约国一方居民取得的各项所得，不论发生于何地，凡本协定上述各条未作规定的，应仅在该缔约国一方征税。

二、第六条第二款规定的不动产所得以外的其他所得，如果所得的收款人为缔约国一方居民，通过设在缔约国另一方的常设机构在该缔约国另一方进行营业，或者通过设在缔约国另一方的固定基地在该缔约国另一方从事独立个人劳务，据以支付所得的权利或财产与该常设机构或固定基地有实际联系的，不适用第一款的规定。在这种情况下，应视具体情况分别适用第七条或第十四条的规定。

第二十二条 财产

一、第六条所述不动产代表的财产，为缔约国一方居民所有并且坐落在缔约国另一方的，可以在该缔约国另一方征税。

二、构成缔约国一方企业设在缔约国另一方的常设机构营业财产部分的动产为代表的财产，可以在该缔约国另一方征税。

三、从事国际运输的船舶和飞机，或附属于经营上述船舶和飞机的动产为代表的财产，应仅在该企业实际管理机构所在的缔约国一方征税。

四、缔约国一方居民的所有其他财产项目，应仅在该缔约国一方征税。

第二十三条 消除双重征税方法

一、在中国，按照中国法律规定，消除双重征税如下：

（一）中国居民从德意志联邦共和国取得的所得，按照本协定规定在德意志联邦共和国缴纳的税额，可以在对该居民征收的中国税收中抵免。但是，抵免额不应超过对该项所得按照中国税法和规章计算的中国税收数额。

（二）从德意志联邦共和国取得的所得是德意志联邦共和国居民公司支付给中国居民公司的股息，并且该中国居民公司拥有支付股息公司股份不少于20%的，该项抵免应考虑支付该股息的公司就该项所得缴纳的德意志联邦共和国税收。

二、在德意志联邦共和国，按照德意志联邦共和国法律规定，

消除双重征税如下：

（一）除按照下述第（二）项允许的外国税收抵免外，对来自中国的所得以及位于中国的财产，凡按照本协定可在中国征税的，应当从德国的税基中免除。

有关从股息取得的各项所得，上述规定应仅适用于中国居民公司支付给直接拥有该公司至少 25%资本的德意志联邦共和国居民公司（不包括合伙企业）的股息，且该股息在计算股息支付公司的利润时未作扣除。

如果支付的股息根据以上规定可以免税，则据以支付股息的股份应免于征收财产税。

（二）按照德国税法关于外国税收抵免的规定，对下述所得按照中国税法和本协定的规定缴纳的中国税收，应从德国税收中抵免：

1. 第（一）项未作规定的股息；

2. 利息；

3. 特许权使用费；

4. 按照第十三条第四款和第五款规定可以在中国征税的所得；

5. 董事费；

6. 按照第十七条规定可以征税的各项所得。

（三）如果德意志联邦共和国居民不能证明常设机构在实现利润的营业年度或中国税收居民在支付股息的营业年度所取得的总收入全部或几乎全部是从《德国外部税收关系法》第八条第一款第一至六项所述的活动中取得的，则第七条和第十条所定义的所得项目以及据以取得上述所得的资产，应适用本款第（二）项的规定，而

不能适用第（一）项的规定；常设机构使用的不动产、从常设机构的上述不动产取得的所得（第六条第四款）、转让上述不动产取得的收益（第十三条第一款）以及构成常设机构营业财产部分的动产（第十三条第二款）均适用上述规定。

（四）然而，德意志联邦共和国保留在确定税率时将按本协定规定在德国免税的所得和财产考虑在内的权利。

（五）虽有第（一）项的规定，如有以下情况，应允许按照第（二）项规定进行税收抵免，以避免双重征税：

1. 如果缔约国双方将所得或财产适用本协定的不同条款或分配给不同的人（适用第九条的情况除外），又不能按照第二十五条第三款的程序解决上述矛盾，且上述差异会造成对相关所得或财产的不征税或者相比不出现矛盾的情况下税率更低，或者

2. 如果在与中国主管当局进行充分协商后，德国主管当局就其将适用第（二）项规定的其他所得项目书面通知中国主管当局。通过允许自发出通知后的下一公历年度的第一天起进行税收抵免，避免对上述所得项目的双重征税。

第二十四条 非歧视待遇

一、缔约国一方的国民在缔约国另一方负担的税收或者有关要求，在相同情况下，特别是在居民身份相同的情况下，不应与该缔约国另一方的国民负担或可能负担的税收或者有关要求不同或比其更重。虽有第一条的规定，本规定也应适用于不是缔约国一方或者双方居民的人。

二、缔约国一方企业在缔约国另一方常设机构的税收负担，不应高于缔约国另一方对从事同样活动的本国企业征收的税收。本规定不应理解为缔约国一方由于民事地位、家庭责任而给予本国居民的任何税收上的个人补贴、优惠和减免也必须给予缔约国另一方居民。

三、除适用第九条第一款、第十一条第八款或第十二条第六款的规定外，缔约国一方企业支付给缔约国另一方居民的利息、特许权使用费和其他款项，在确定该企业应纳税利润时，应像支付给该缔约国一方居民的一样，在相同情况下予以扣除。同样，缔约国一方企业对缔约国另一方居民所欠的任何债务，在确定该企业的应纳税财产时，应像欠债于该缔约国一方居民的一样，在相同情况下予以扣除。

四、缔约国一方企业的资本全部或部分、直接或间接为缔约国另一方一个或多个居民拥有或控制，该企业在该缔约国一方负担的税收或者有关要求，不应与该缔约国一方其他同类企业负担或可能负担的税收或者有关要求不同或比其更重。

五、虽有第二条的规定，本条规定应适用于所有种类的税收。

第二十五条 相互协商程序

一、如有人认为，缔约国一方或者双方所采取的措施，导致或将导致对其的征税不符合本协定的规定时，可以不考虑各缔约国国内法律的救济办法，将案情提交该人为其居民的缔约国主管当局，或者如果其案情属于第二十四条第一款，可以提交该人为其国民的

缔约国主管当局。该项案情必须在不符合本协定规定的征税措施第一次通知之日起三年内提出。

二、上述主管当局如果认为所提意见合理，又不能单方面圆满解决时，应设法同缔约国另一方主管当局相互协商解决，以避免不符合本协定的征税。达成的协议应予执行，而不受各缔约国国内法律规定的期限的限制。

三、缔约国双方主管当局应通过相互协商设法解决在解释或实施本协定时所发生的困难或疑义，也可以对本协定未作规定的消除双重征税问题进行协商。

四、缔约国双方主管当局为达成以上条款的协议，可以相互直接联系。如有必要，双方主管当局代表或负责的税务机关的代表可以进行会谈交换意见。

第二十六条 信息交换

一、缔约国双方主管当局应交换可以预见的与执行本协定的规定相关的信息，或与执行缔约国双方或其地方当局征收的各种税收的国内法律相关的信息，以根据这些法律征税与本协定不相抵触为限。信息交换不受第一条和第二条的限制。

二、缔约国一方根据第一款收到的任何信息，都应和根据该国国内法所获得的信息一样作密件处理，仅应告知与第一款所指税收有关的评估、征收、执行、起诉或上诉裁决有关的人员或当局（包括法院和行政部门）及其监督部门，以保证执行本协定和税法的合理实施。上述人员或当局应仅为上述目的使用该信息，但可以在公开

法庭的诉讼程序或法庭判决中披露有关信息。

三、第一款和第二款的规定在任何情况下不应被理解为缔约国一方有以下义务：

（一）采取与该缔约国一方或缔约国另一方的法律和行政惯例相违背的行政措施；

（二）提供按照该缔约国一方或缔约国另一方的法律或正常行政渠道不能得到的信息；

（三）提供泄露任何贸易、经营、工业、商业或专业秘密或贸易过程的信息或者泄露会违反公共政策（公共秩序）的信息。

四、如果缔约国一方根据本条请求信息，缔约国另一方应使用其信息收集手段取得所请求的信息，即使缔约国另一方可能并不因其税务目的需要该信息。前句所确定的义务受第三款的限制，但是这些限制在任何情况下不应被理解为允许缔约国一方仅因该信息没有国内利益而拒绝提供。

五、在任何情况下，第三款的规定不应被理解为允许缔约国一方仅因信息由银行、其他金融机构、被指定人、代理人或受托人所持有，或者因信息与人的所有权权益有关，而拒绝提供。

第二十七条 税收征收协助

一、缔约国双方应努力相互协助征收税款。缔约国双方主管当局可以通过相互协商确定本条规定的实施方式。

二、本条的规定在任何情况下不应理解为缔约国一方有以下义务：

（一）采取与该缔约国一方或缔约国另一方法律和行政惯例相违背的行政措施；

（二）采取会违反公共政策（公共秩序）的措施。

第二十八条 来源地征税的程序规则

一、如果缔约国一方对缔约国另一方居民取得的股息、利息、特许权使用费和其他所得项目的征税实行源泉扣缴，则缔约国一方按照其国内法规定的预提税税率征税的权利不应受到本协定规定的影响。如果按照本协定规定在来源地不征税或按较低税率征税，则应在纳税人提出申请后对源泉扣缴的税收进行退税。

二、退税申请必须在所得产生的缔约国一方的法律所规定的期限内提出。

三、虽有本条第一款的规定，缔约国双方的程序应保证：

（一）按照本协定在来源国不征税的所得，不应对其支付征税；

（二）按照本协定在来源国按较低税率征税的所得，应按相关条款规定的税率对其支付征税。

四、所得产生的缔约国一方可以要求出具由缔约国另一方主管当局开具的居民身份证明。

五．双方主管当局可以通过相互协商实施本条规定，如有必要，可以制定其他程序来实现本协定规定的税收减免。

第二十九条 其他规则

一、如果进行某项交易或安排的主要目的是取得协定优惠，但该项优惠的取得违背了本协定相关规定的目的和用意，则不能给予该项优惠。

二、本协定不应被解释为缔约国一方不能行使其关于防止逃税和避税的国内法律规定。

三、如有人认为以上条款的实施导致对其的征税不符合本协定的规定，可以申请相互协商。

第三十条 外交代表和领事官员

本协定应不影响按国际法一般原则或特别协定规定的外交代表或领事官员的税收特权。

第三十一条 议定书

所附议定书应为本协定的组成部分。

第三十二条 生效

一、缔约国双方应相互通知已完成使本协定生效所必需的国内法律程序。本协定自最后一份通知收到之日起第 30 天生效。

二、本协定规定应适用于：

（一）在本协定生效后的下一公历年度的 1 月 1 日或以后取得的所得源泉扣缴的税收；

（二）在本协定生效后的下一公历年度的1月1日或以后开始的任何纳税年度征收的其他税收。

三、本协定生效后，一九八五年六月十日在波恩签订的《德意志联邦共和国和中华人民共和国关于对所得和财产避免双重征税的协定》即行失效。一九八五年六月十日在波恩签订的协定规定应继续适用于本协定生效日前发生的所有税收案件。在任何情况下，在本协定按照本条第二款规定执行前，一九八五年六月十日在波恩签订的协定规定应继续适用。

第三十三条 终止

本协定应长期有效，但缔约国任何一方可以在本协定生效之日起满5年后开始的任何公历年度的6月30日或以前，通过外交途径书面通知对方终止本协定。在这种情况下，本协定应停止适用于：

（一）在终止通知发出后的下一公历年度的 1 月 1 日或以后取得的所得源泉扣缴的税收；

（二）在终止通知发出后的下一公历年度的1月1日或以后开始的任何纳税年度征收的其他税收。

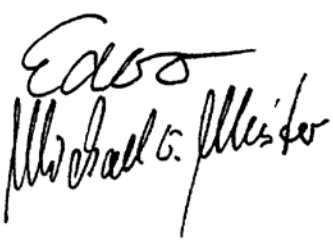
缔约国另一方收到上述通知之日即决定最终期限（任何公历年度的6月30日）。

下列代表，经各自政府正式授权，在本协定上签字，以昭信守。

本协定于 2014 年 3 月 28 日在 柏林 签订，一式两份，每份均用德文、中文和英文写成，三种文本均应作准。如对德文和中文文本解释产生分歧，以英文本为准。

德意志联邦共和国

代表



中华人民共和国

代表

议定书

2014 年 3 月 28 日在签订《德意志联邦共和国和中华人民共和国对所得和财产避免双重征税和防止偷漏税的协定》（以下简称“协定”）时，双方同意下列规定应作为协定的组成部分：

一、 关于“缔约国”一语：

在德意志联邦共和国，“缔约国”一语包括“Länder”。“Länder”一语是指德意志联邦共和国基本法所规定的德国各州。

二、 关于第七条：

缔约国双方表示，在解释和执行该条规定时愿意参考经济合作与发展组织（OECD）范本注释(2008 年版)。

三、 关于第十条第二款第二项：

在德意志联邦共和国，投资工具是指《德国拥有上市股份的房地产证券公司法案》（REIT 法案）第一条第一款所规定的公司。

四、 关于第十条和第十一条：

虽有协定第十条和第十一条的规定，

（一）如果股息和利息是由于分享利润的权利或债权而取得的（包括按照德意志联邦共和国税法，匿名合伙人从其股份取得的所得、从利率与借款人的利润相关的贷款取得的所得或从利润分配债权取得的所得），并且

（二）在确定上述所得债务人的利润时可以扣除，

则股息和利息可以在其发生的缔约国一方，按照该国的法律征

税。

五、 关于第十九条：

（一）第一款和第二款的规定也适用于支付给向中国人民银行和德意志联邦银行提供服务的个人的薪金、工资、其他类似报酬和退休金。

（二）由于缔约国一方或其地方当局的发展援助项目，仅由缔约国一方或其地方当局提供的基金向经过缔约国另一方同意而派遣到缔约国另一方的专家或志愿者支付的报酬，也应适用第一款的规定。

（三）1.由德国政府基金向为歌德学院提供服务的个人支付的；

2. 由中国政府基金向为中国文化中心提供服务的个人支付的；

3. 支付给缔约国双方同意的其他类似机构的

薪金、工资、其他类似报酬和养老金，也应适用第一款和第二款的规定。

六、 关于第二十六条：

如果按照国内法在本协定下交换了个人信息，除遵守缔约国双方有效的法律规定外，还应遵守以下补充规定：

（一）“个人信息”应意味着任何与身份确定的或身份可以确定的自然人相关的信息；身份可以确定的人指的是通过信息请求方提供的信息可以确定身份的人。

（二）信息接收方仅可以由于第二十六条所列目的使用上述信息，信息的使用应受信息提供方规定条件的限制。未经信息提供方事先同意，按照本协定规定所交换的数据和信息不得用于刑事案件。信息提供方应根据国内法和任何适用的双边或多边刑事司法协助条

约决定是否同意。

（三）信息接收方应当按照信息提供方的要求，将所提供信息的使用情况和得到的结果通知信息提供方。

（四）只有经过信息提供方事先许可，才能将信息提供给未在第二十六条第二款提到的其他机构。

（五）信息提供方应尽最大努力确保所提供信息的准确性，保证其对于信息提供的目的来说是必要的和合适的。必须遵守适用的国内法律对信息提供的限制。如果信息提供方提供了不准确的信息或不应当提供的信息，应立即通知信息接收方。信息接收方应当有义务立即纠正或删除上述信息。

（六）一经申请，应将所提供的与其相关的信息及其将要使用的情况通知相关人员。如果经过总体衡量，不提供信息的公共利益大于提供信息带给相关人员的利益，则没有义务提供该信息。在所有其他情况下，相关人员被通知与其相关的已有信息的权利应受到在其主权领土内提出信息申请的缔约国一方国内法的约束。

（七）如果信息提供方的国内法包含对删除所提供个人信息的特殊规定，则信息提供方应据此通知信息接收方。虽有上述法律规定，一旦不再因为提供信息所要达到的目的而需要所提供的个人信息，应当立即将其删除。

（八）信息提供方和信息接收方应当有义务对个人信息的提供和接收保存正式记录。

（九）信息提供方和信息接收方应当有义务采取有效措施保护所提供的个人信息，未经许可不得接触、修改和披露上述信息。

下列代表，经各自政府正式授权，在本议定书上签字，以昭信守。

本议定书于 2014 年 7 月 28 日在柏林 签订，一式两份，每份均用德文、中文和英文写成，三种文本均应作准。如对德文和中文文本解释产生分歧，以英文本为准。

德意志联邦共和国

代表

中华人民共和国

代表

[TEXT IN ENGLISH – TEXTE EN ANGLAIS]

Agreement

between

the Federal Republic of Germany

and

the People's Republic of China

for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital

The Federal Republic of Germany

and

the People's Republic of China,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

Article 1
Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2
Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:

a) in China:
(i) the individual income tax;
(ii) the enterprise income tax;
(hereinafter referred to as "Chinese tax");

b) in the Federal Republic of Germany:
(i) the income tax (Einkommensteuer);
(ii) the corporation tax (Körperschaftsteuer);
(iii) the trade tax (Gewerbesteuer); and
(iv) the capital tax (Vermögensteuer);
including the supplements levied thereon

(hereinafter referred to as "German tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3
General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

a) the term "China" means the People's Republic of China, and when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in so far as the Chinese laws relating to taxation apply, and any area beyond its territorial sea, insofar as the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law and its internal law;

b) the term "Germany" means the Federal Republic of Germany, and when used in a geographical sense, means the territory of the Federal Republic of Germany as well as the area of the sea-bed, its sub-soil and the superjacent waters adjacent to the territorial sea, in so far as the Federal Republic of Germany may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;

c) the term "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or China as the context requires;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term "national" means:

(i) in respect of the Federal Republic of Germany,
any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(ii) in respect of China,
any individual possessing the nationality of the People's Republic of China, and any legal person, partnership or association deriving its status as such from the laws in force in the People's Republic of China;

i) the term "competent authority" means:

(i) in the case of China, the State Administration of Taxation or its authorized representative;

(ii) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State or its local authorities. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he

has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5
Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;
b) a branch;
c) an office;
d) a factory;
e) a workshop, and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

a) A building site, or construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;

b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in that Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7
Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:

a) profits from the rental on a bare-boat basis of ships or aircraft, and

b) profits from the use, maintenance or rental of containers (including trailers and related equipment used for the transport of the containers) used for the transport of goods or merchandise;

where such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated Enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends where those dividends are paid out of

income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax;

c) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, or other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

a) interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State;

b) interest arising in a Contracting State and paid in consideration of a loan guaranteed or insured by the other Contracting State or any financial institution wholly owned by it shall be exempt from tax in the first-mentioned State;

c) interest arising in China and paid to the German Federal Bank (Deutsche Bundesbank), the Development Loan Corporation (Kreditanstalt für Wiederaufbau) or the German Investment and Development Company (DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH), and any public credit institution of the Federal Republic of Germany, if the competent authorities of both States have agreed thereto, shall be exempt from Chinese tax;

d) interest arising in the Federal Republic of Germany and paid to:
(i) the People's Bank of China;
(ii) the China Development Bank Corporation;
(iii) the Agricultural Development Bank of China;
(iv) the Export-Import Bank of China;
(v) the National Council for Social Security Fund;
(vi) the China Investment Corporation, and
(vii) any other public credit institution of the Government of China, if the competent authorities of both States have agreed thereto;

shall be exempt from German tax.

4. Notwithstanding the provisions of paragraph 2, interest as referred to in paragraph 1 may be taxed only in the Contracting State of which the recipient is a resident if the recipient is the beneficial owner of the interest and the interest is paid in connection with the sale of commercial or scientific equipment on credit.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1 to 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base

in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12
Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) in the case of royalties referred to in sub-paragraph a) of paragraph 3, 10 per cent of the gross amount of the royalties, and

b) in the case of royalties referred to in sub-paragraph b) of paragraph 3, 10 per cent of the adjusted amount of the royalties. For the purpose of this sub-paragraph "the adjusted amount" means 60 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means:

a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience, and

b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in

that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13
Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains derived by a resident of a Contracting State from the alienation of shares, other than

shares in which there is substantial and regular trading on a recognized stock exchange provided that the total of the shares alienated by the resident during the fiscal year in which the alienation takes place does not exceed 3 per cent of the quoted shares, of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the first-mentioned resident, at any time during the 12 month period preceding the alienation has owned, directly or indirectly, at least 25 per cent of the shares of that company.

6. Gains from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Income from Employment

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall

be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship or aircraft is situated.

Article 16
Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or sportsmen who is resident in a Contracting State from activities exercised in the other Contracting State within the framework of a cultural exchange program agreed upon by the Governments of both Contracting States shall not be taxed in that other State.

Article 18
Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and similar payments or annuities paid to a resident of a Contracting State from the other Contracting State shall only be taxable in the first-mentioned State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a local authority thereof shall be taxable only in that State.

Article 19
Government Service

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or local authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or
(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or local authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 20
Visiting Professors, Teachers and Students

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official

programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State. If the period exceeds two years, the remuneration for such activities may be taxed in the first-mentioned State from the beginning of the visit.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

3. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21
Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22
Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23
Methods for Elimination of Double Taxation

1. In China, in accordance with the provisions of the law of China, double taxation shall be eliminated as follows:

a) Where a resident of China derives income from the Federal Republic of Germany, the amount of tax on that income payable in the Federal Republic of Germany in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

b) Where the income derived from the Federal Republic of Germany is dividend paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of China and which owns not less than 20 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to the Federal Republic of Germany by the company paying the dividend in respect of its income.

2. In the Federal Republic of Germany, in accordance with the provisions of the law of the Federal Republic of Germany, double taxation shall be eliminated as follows:

a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from the assessment basis of the German tax any item of income arising in China and any item of capital situated within China which, according to this Agreement, may be taxed in China.

In the case of items of income from dividends, the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of China at least 25 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any share-holding the dividends of which if paid, would be exempted, according to the foregoing sentences.

b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the Chinese tax paid under the laws of China and in accordance with this Agreement:

(i) dividends not dealt with in sub-paragraph a);
(ii) interest;
(iii) royalties;
(iv) items of income that may be taxed in China according to paragraphs 4 and 5 of Article 13;
(v) directors' fees;
(vi) items of income that may be taxed according to Article 17.

c) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in China in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos. 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 2 of Article 13).

d) The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.

e) Notwithstanding the provisions of sub-paragraph a), double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)

i) if in the Contracting States items of income or capital are placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 25 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or

ii) if after due consultation with the competent authority of China, the German competent authority notifies the Chinese competent authority in writing of other items of income to which it intends to apply the provisions of sub-paragraph b). Double taxation is then avoided for the notified item of income by allowing a tax credit from the first day of the calendar year next following that in which the notification was made.

Article 24
Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of the Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25
Mutual Agreement Prodedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The

case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. If necessary, representatives of the competent authorities and of the responsible tax administrations may meet for an exchange of opinions.

Article 26
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or their local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above with a view to the proper application of this Agreement and the tax laws. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27
Assistance in the Collection of Taxes

1. The Contracting States shall endeavour to lend assistance to each other in the collection of revenue claims. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligations:

a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (*ordre public*).

Article 28
Procedural Rules for Taxation at Source

1. If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if according to this Agreement, there is no or reduced source tax.

2. Refund applications must be submitted within the time limits in accordance with the provisions of the laws of the Contracting State in which the items of income arise.

3. Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect,

a) that payments of income subject under this Agreement to no tax in the state of source may be made without deduction of tax;

b) that payments of income subject under this Agreement to reduced tax in the state of source may be made with deduction of tax only at the rate provided for in the relevant Article.

4. The Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State.

5. The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

Article 29
Miscellaneous Rules

1. The benefits of this Agreement shall not be available where the main purpose for entering into certain transactions or arrangements was to secure these benefits and obtaining those benefits would be contrary to the object and purpose of the relevant provisions of this Agreement.

2. This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance.

3. Where a person considers that the application of the preceding paragraphs result for him in taxation not in accordance with the provisions of this Agreement, he may apply for a mutual agreement procedure.

Article 30
Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 31
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 32
Entry into Force

1. This Agreement shall enter into force on the thirtieth day following the day on which the two Contracting States have notified each other that the domestic legal procedures for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. The provisions of this Agreement shall have effect:

a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement enters into force;

b) in the case of other taxes, for any tax year beginning on or after the first day of January of the calendar year next following that in which the Agreement enters into force.

3. With the entry into force of this Agreement, the Agreement between the People's Republic of China and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital signed in Bonn on 10 June 1985 shall expire. The provisions of the Agreement signed in Bonn on 10 June 1985 shall continue to apply to all tax cases having occurred prior to the date upon which this Agreement has entered into force. In any case, the provisions of the Agreement signed in Bonn on 10 June 1985 shall continue to be applicable until this Agreement shall become effective as provided for in paragraph 2 of this Article.

Article 33
Termination

This Agreement shall continue in effect indefinitely but either of the Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;

b) in the case of other taxes, for any tax year beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline (the thirtieth day of June in any calendar year).

In Witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Berlin on the 28th day of March, 2014, in duplicate in the German, Chinese and English languages, all texts being authentic. In case of divergence in interpretation of the German and the Chinese texts, the English text shall prevail.

For the
Federal Republic of Germany

For the
People's Republic of China

Protocol

At the signing of the Agreement between the Federal Republic of Germany and the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on March 28th, 2014 (hereinafter referred to as "the Agreement"), both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

1. With reference to the term "Contracting State":

In respect of the Federal Republic of Germany, the term "Contracting State" includes "Länder". The term "Länder" means German States in accordance with the Basic Law for the Federal Republic of Germany.

2. With reference to Article 7:

The Contracting States expressed their willingness to refer to the OECD Model Commentary (2008) in interpreting and applying the provisions of this Article.

3. With reference to sub-paragraph b) of paragraph 2 of Article 10:

In the case of the Federal Republic of Germany, an investment vehicle is a company according to paragraph 1 of section 1 of the German Act on German Real Estate Stock Corporations with Listed Shares (REIT Act).

4. With reference to Articles 10 and 11:

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State,

a) if they are derived from rights or debt claims carrying a right to participate in profits (including income derived by a silent partner ("stiller Gesellschafter") from his participation as such, or from a loan with an interest rate linked to borrower's profit ("partiarisches Darlehen") or from profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of the Federal Republic of Germany) and

b) under the condition that they are deductible in the determination of profits of the debtor of such income.

5. With reference to Article 19:

a) The provisions of paragraphs 1 and 2 shall also apply in respect of salaries, wages and other similar remuneration and pensions paid to individuals in respect of services rendered to the People's Bank of China and the Deutsche Bundesbank.

b) The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State or a local authority thereof, out of funds exclusively supplied by that State or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

c) The provisions of paragraphs 1 and 2 shall also apply in respect of salaries, wages and other similar remuneration and pensions paid:

(i) out of German governmental funds to individuals in respect of services rendered to the Goethe Institute;

(ii) out of Chinese governmental funds to individuals in respect of services rendered to the Chinese Cultural Center;

(iii) to other comparable institutions mutually agreed by the Contracting States.

6. With reference to Article 26:

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

a) "Personal data" shall mean any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified through the information provided by the requesting agency.

b) The receiving agency may use such data only for the purposes stated in Article 26 and shall be subject to the conditions prescribed by the supplying agency. Data and information communicated pursuant to this Agreement must not be used in criminal matters without the prior consent of the supplying Contracting State, which is to be given in accordance with national law and in compliance with any applicable bi- or multilateral agreements on mutual assistance in criminal matters.

c) The receiving agency shall on request inform the supplying agency about the use of the supplied data and the results achieved thereby.

d) Any subsequent supply to other agencies not mentioned in paragraph 2 of Article 26 may be effected only with the prior approval of the supplying agency.

e) The supplying agency shall endeavour to their best efforts to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any limitations on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of

this without delay. That agency shall then be obliged to correct or erase such data without delay.

f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

g) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.

i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

In Witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done at Berlin on the 28th day of March, 2014, in duplicate in the German, Chinese and English languages, all texts being authentic. In case of divergence in interpretation of the German and the Chinese texts, the English text shall prevail.

For the
Federal Republic of Germany

For the
People's Republic of China

I

G7 GERMANY
Dresden 2015

Dr. Michael Meister
Parlamentarischer Staatssekretär

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10117 Berlin
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DATUM 29. April 2015

To the
Deputy Commissioner of the
State Administration of Taxation of the
People's Republic of China
Mr Zhang Zhiyong

Beijing

14/07

GZ **IV B 4 - S 1301-CHN/14/10001**
DOK **2015/0331970**
(bei Antwort bitte GZ und DOK angeben)

Dear Mr Zhang,

I have the honour to write to you in your capacity as Deputy Commissioner of the State Administration of Taxation of the People's Republic of China. Please let me to propose the following formal corrections to the German- and English-language versions of the Agreement between the People's Republic of China and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital which was signed in Berlin on 28 March 2014, hereinafter referred to as the "Agreement".

I. German version

1. In subdivision i)(i) of paragraph 1 of Article 3, the word "staatliche" shall be replaced by "Staatliche", because it is an official name.
2. In subdivision e)(ii) of paragraph 2 of Article 23, the passage

"…wenn die zuständige chinesische Behörde nach gehöriger Konsultation mit der zuständigen deutschen Behörde dieser schriftlich andere Einkünfte notifiziert, bei denen sie die Anrechnungsmethode nach Buchstabe b anzuwenden beabsichtigt."

shall be replaced by

"…wenn die zuständige deutsche Behörde nach gehöriger Konsultation mit der zuständigen chinesischen Behörde dieser schriftlich andere Einkünfte notifiziert, bei denen sie Buchstabe b anzuwenden beabsichtigt."

II. English version

1. In sub-paragraph c) of paragraph 1 of Article 3, the word "term" shall be replaced by "terms".
2. In paragraph 3 of Article 17, the word "sportsmen" shall be replaced by "sportsman".
3. In sub-paragraph b) of paragraph 1 of Article 23, the word "a" shall be inserted before the word "dividend" in the first line.
4. In paragraph 3 of Article 29, the word "result" shall be replaced by "results".
5. In the first line of paragraph 1 of Article 33, the term "Contracting State" shall be replaced by "Contracting States".

III. Validity of the corrections

The corrections set out under paragraphs 1 and 2 of section I above and under paragraphs 1 to 5 of section II above shall replace the previous wording of the German- and English-language versions of the Agreement retroactively from the date of the signing of the Agreement.

If you agree to the proposals made under sections I to III above, the Agreement is duly corrected in accordance with paragraph 1 of Article 79 of the Vienna Convention on the Law of Treaties of 23 May 1969. The Federal Government will then introduce the corrected text into the parliamentary procedure.

Yours sincerely

II

STATE ADMINISTRATION OF TAXATION
THE PEOPLE'S REPUBLIC OF CHINA

To the
Parliamentary State Secretary at the German Federal Ministry of Finance
Dr Michael Meister
Wilhelmstr. 97
10117 Berlin

June 18, 2015

Dear Dr. Michael Meister,

As Deputy Commissioner of the State Administration of Taxation of the People's Republic of China, it is my honour to confirm receipt of your letter of April 29, 2015, which reads as follows:

[See letter I]

I have the honour to inform you that the People's Republic of China agrees to the proposals of the Federal Republic of Germany. The Agreement is thus duly corrected in accordance with paragraph 1 of Article 79 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Yours sincerely

[TEXT IN GERMAN – TEXTE EN ALLEMAND]

Abkommen

zwischen der Bundesrepublik Deutschland

und der Volksrepublik China

zur Vermeidung der Doppelbesteuerung und

zur Verhinderung der Steuerverkürzung auf dem Gebiet der

Steuern vom Einkommen und vom Vermögen

Die Bundesrepublik Deutschland

und

die Volksrepublik China –

von dem Wunsch geleitet, ein Abkommen zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen zu schließen –

sind wie folgt übereingekommen:

Artikel 1
Unter das Abkommen fallende Personen

Dieses Abkommen gilt für Personen, die in einem Vertragsstaat oder in beiden Vertragsstaaten ansässig sind.

Artikel 2
Unter das Abkommen fallende Steuern

(1) Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die für Rechnung eines Vertragsstaats oder seiner Gebietskörperschaften erhoben werden.

(2) Als Steuern vom Einkommen und vom Vermögen gelten alle Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschließlich der Steuern vom Gewinn aus der Veräußerung beweglichen oder unbeweglichen Vermögens, der Lohnsummensteuern sowie der Steuern vom Vermögenszuwachs.

(3) Zu den derzeit bestehenden Steuern, für die das Abkommen gilt, gehören insbesondere

a) in China:
   (i) die Einkommensteuer,
   (ii) die Körperschaftsteuer,

   (im Folgenden als „chinesische Steuer" bezeichnet);

b) in der Bundesrepublik Deutschland
   (i) die Einkommensteuer,
   (ii) die Körperschaftsteuer,

(iii) die Gewerbesteuer und
(iv) die Vermögensteuer,

einschließlich der hierauf erhobenen Zuschläge
(im Folgenden als „deutsche Steuer" bezeichnet);

(4) Das Abkommen gilt auch für alle Steuern gleicher oder im Wesentlichen ähnlicher Art, die nach der Unterzeichnung des Abkommens neben den bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der Vertragsstaaten teilen einander die in ihren Steuergesetzen eingetretenen bedeutsamen Änderungen mit.

Artikel 3
Allgemeine Begriffsbestimmungen

(1) Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert,

a) bedeutet der Ausdruck „China" die Volksrepublik China und, im geografischen Sinn verwendet, das gesamte Hoheitsgebiet der Volksrepublik China einschließlich ihres Küstenmeers, soweit das chinesische Steuerrecht gilt, und alle Gebiete außerhalb ihres Küstenmeers, soweit die Volksrepublik China in Übereinstimmung mit dem Völkerrecht und ihren innerstaatlichen Rechtsvorschriften über souveräne Rechte für die Erforschung und Ausbeutung der Ressourcen des Meeresbodens und des Meeresuntergrunds sowie der darüber liegenden Gewässer verfügt;

b) bedeutet der Ausdruck „Deutschland" die Bundesrepublik Deutschland und, im geographischen Sinn verwendet, das Hoheitsgebiet der Bundesrepublik Deutschland sowie das an das Küstenmeer angrenzende Gebiet des Meeresbodens, des Meeresuntergrunds und der darüber liegenden Gewässer, soweit die Bundesrepublik Deutschland in Übereinstimmung mit dem Völkerrecht und ihren innerstaatlichen Rechtsvorschriften souveräne Rechte und Hoheitsbefugnisse zum Zweck der Erforschung, Ausbeutung, Erhaltung und Bewirtschaftung der lebenden und nicht lebenden natürlichen Ressourcen ausübt;

c) bedeuten die Ausdrücke „ein Vertragsstaat" und „der andere Vertragsstaat" je nach Zusammenhang die Bundesrepublik Deutschland oder China;

d) umfasst der Ausdruck „Person" natürliche Personen, Gesellschaften und alle anderen Personenvereinigungen;

e) bedeutet der Ausdruck „Gesellschaft" juristische Personen oder Rechtsträger, die für die Besteuerung wie juristische Personen behandelt werden;

f) bedeuten die Ausdrücke „Unternehmen eines Vertragsstaats" und „Unternehmen des

anderen Vertragsstaats“ ein Unternehmen, das von einer in einem Vertragsstaat ansässigen Person betrieben wird, beziehungsweise ein Unternehmen, das von einer im anderen Vertragsstaat ansässigen Person betrieben wird;

g) bedeutet der Ausdruck „internationaler Verkehr“ jede Beförderung mit einem Seeschiff oder Luftfahrzeug, das von einem Unternehmen mit tatsächlicher Geschäftsleitung in einem Vertragsstaat betrieben wird, es sei denn, das Seeschiff oder Luftfahrzeug wird ausschließlich zwischen Orten im anderen Vertragsstaat betrieben;

h) bezeichnet der Ausdruck „Staatsangehöriger“

(i) in Bezug auf die Bundesrepublik Deutschland
alle Deutschen im Sinne des Grundgesetzes für die Bundesrepublik Deutschland sowie alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in der Bundesrepublik Deutschland geltenden Recht errichtet worden sind;

(ii) in Bezug auf China
alle natürlichen Personen, die die Staatsangehörigkeit der Volksrepublik China besitzen, sowie alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in der Volksrepublik China geltenden Recht errichtet worden sind;

i) bedeutet der Ausdruck „zuständige Behörde“

(i) in China die staatliche Steuerverwaltung oder ihren Bevollmächtigten;

(ii) in der Bundesrepublik Deutschland das Bundesministerium der Finanzen oder die Behörde, an die es seine Befugnisse delegiert hat.

(2) Bei der Anwendung des Abkommens durch einen Vertragsstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder im Abkommen nicht definierte Ausdruck die Bedeutung, die ihm im Anwendungszeitraum nach dem Recht dieses Staates für die Steuern zukommt, für die das Abkommen gilt, wobei die Bedeutung nach dem in diesem Staat anzuwendenden Steuerrecht Vorrang hat vor einer Bedeutung, die der Ausdruck nach anderem Recht dieses Staates hat.

Artikel 4
Ansässige Person

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragsstaat ansässige Person“ eine Person, die nach dem Recht dieses Staates dort aufgrund ihres Wohnsitzes, ihres ständigen Aufenthalts, des Ortes ihrer Gründung, des Ortes ihrer

tatsächlichen Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist, und umfasst auch diesen Staat und seine Gebietskörperschaften. Dieser Ausdruck umfasst jedoch nicht eine Person, die in diesem Staat nur mit Einkünften aus Quellen in diesem Staat oder mit in diesem Staat gelegenem Vermögen steuerpflichtig ist.

(2) Ist nach Absatz 1 eine natürliche Person in beiden Vertragsstaaten ansässig, so gilt Folgendes:

a) Die Person gilt als nur in dem Staat ansässig, in dem sie über eine ständige Wohnstätte verfügt; verfügt sie in beiden Staaten über eine ständige Wohnstätte, so gilt sie als nur in dem Staat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat (Mittelpunkt der Lebensinteressen);

b) kann nicht bestimmt werden, in welchem Staat die Person den Mittelpunkt ihrer Lebensinteressen hat, oder verfügt sie in keinem der Staaten über eine ständige Wohnstätte, so gilt sie als nur in dem Staat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat;

c) hat die Person ihren gewöhnlichen Aufenthalt in beiden Staaten oder in keinem der beiden Staaten, so gilt sie als nur in dem Staat ansässig, dessen Staatsangehöriger sie ist;

d) ist die Person Staatsangehöriger beider Staaten oder keines der Staaten, so regeln die zuständigen Behörden der Vertragsstaaten die Frage in gegenseitigem Einvernehmen.

(3) Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Vertragsstaaten ansässig, so gilt sie als nur in dem Staat ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet.

Artikel 5
Betriebsstätte

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „Betriebsstätte" eine feste Geschäftseinrichtung, durch die die Tätigkeit eines Unternehmens ganz oder teilweise ausgeübt wird.

(2) Der Ausdruck „Betriebsstätte" umfasst insbesondere

a) einen Ort der Leitung,
b) eine Zweigniederlassung;
c) eine Geschäftsstelle;
d) eine Fabrikationsstätte;
e) eine Werkstätte und

f) ein Bergwerk, ein Öl- oder Gasvorkommen, einen Steinbruch oder eine andere Stätte der Gewinnung natürlicher Ressourcen.

(3) Der Ausdruck „Betriebsstätte" umfasst ebenso

a) eine Bauausführung, Montage oder damit verbundene Aufsichtstätigkeit, jedoch nur, wenn die Dauer dieser Bauausführung, Montage oder Tätigkeit zwölf Monate überschreitet;

b) die Erbringung von Dienstleistungen, einschließlich Beratungsleistungen, durch ein Unternehmen mithilfe von Angestellten oder sonstigem für diesen Zweck verpflichteten Personal, jedoch nur, wenn diese Tätigkeiten (für dasselbe oder ein damit verbundenes Vorhaben) in einem Vertragsstaat innerhalb eines Zeitraums von zwölf Monaten insgesamt mehr als 183 Tage andauern.

(4) Ungeachtet der vorstehenden Bestimmungen dieses Artikels gelten nicht als Betriebsstätten:

a) Einrichtungen, die ausschließlich zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens benutzt werden;

b) Bestände von Gütern oder Waren des Unternehmens, die ausschließlich zur Lagerung, Ausstellung oder Auslieferung unterhalten werden;

c) Bestände von Gütern oder Waren des Unternehmens, die ausschließlich zu dem Zweck unterhalten werden, durch ein anderes Unternehmen bearbeitet oder verarbeitet zu werden;

d) eine feste Geschäftseinrichtung, die ausschließlich zu dem Zweck unterhalten wird, für das Unternehmen Güter oder Waren einzukaufen oder Informationen zu beschaffen;

e) eine feste Geschäftseinrichtung, die ausschließlich zu dem Zweck unterhalten wird, für das Unternehmen andere Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen;

f) eine feste Geschäftseinrichtung, die ausschließlich zu dem Zweck unterhalten wird, mehrere der unter den Buchstaben a bis e genannten Tätigkeiten auszuüben, vorausgesetzt, dass die sich daraus ergebende Gesamttätigkeit der festen Geschäftseinrichtung vorbereitender Art ist oder eine Hilfstätigkeit darstellt.

(5) Ist eine Person – mit Ausnahme eines unabhängigen Vertreters im Sinne des Absatzes 6 – in einem Vertragsstaat für ein Unternehmen des anderen Vertragsstaats tätig und besitzt sie in diesem Vertragsstaat die Vollmacht, im Namen des Unternehmens Verträge abzuschließen, und übt sie die Vollmacht dort gewöhnlich aus, so wird das Unternehmen ungeachtet der

Absätze 1 und 2 so behandelt, als habe es in diesem Vertragsstaat für alle von der Person für das Unternehmen ausgeübten Tätigkeiten eine Betriebsstätte, es sei denn, diese Tätigkeiten beschränken sich auf die in Absatz 4 genannten Tätigkeiten, die, würden sie durch eine feste Geschäftseinrichtung ausgeübt, diese Einrichtung nach dem genannten Absatz nicht zu einer Betriebsstätte machten.

(6) Ein Unternehmen eines Vertragsstaats wird nicht schon deshalb so behandelt, als habe es eine Betriebsstätte im anderen Vertragsstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln. Wenn die Tätigkeit dieses Vertreters jedoch vollständig oder fast vollständig für dieses Unternehmen erfolgt und dieses Unternehmen und der Vertreter in ihren kaufmännischen oder finanziellen Beziehungen an vereinbarte oder auferlegte Bedingungen gebunden sind, die von denen abweichen, die unabhängige Unternehmen miteinander vereinbaren würden, gilt der Vertreter nicht als unabhängiger Vertreter im Sinne dieses Absatzes.

(7) Allein dadurch, dass eine in einem Vertragsstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die im anderen Vertragsstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder auf andere Weise) ihre Tätigkeit ausübt, wird keine der beiden Gesellschaften zur Betriebsstätte der anderen.

Artikel 6
Einkünfte aus unbeweglichem Vermögen

(1) Einkünfte, die eine in einem Vertragsstaat ansässige Person aus im anderen Vertragsstaat gelegenem, unbeweglichem Vermögen erzielt (einschließlich der Einkünfte aus land- und forstwirtschaftlichen Betrieben), können im anderen Staat besteuert werden.

(2) Der Ausdruck „unbewegliches Vermögen" hat die Bedeutung, die ihm nach dem Recht des Vertragsstaats zukommt, in dem das Vermögen liegt. Der Ausdruck umfasst in jedem Fall das Zubehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, für die die Vorschriften des Privatrechts über Grundstücke gelten, Nutzungsrechte an unbeweglichem Vermögen sowie Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Mineralvorkommen, Quellen und anderen natürlichen Ressourcen; Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

(3) Absatz 1 gilt für Einkünfte aus der unmittelbaren Nutzung, der Vermietung oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.

(4) Die Absätze 1 und 3 gelten auch für Einkünfte aus unbeweglichem Vermögen eines Unternehmens und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung einer selbständigen Arbeit dient.

Artikel 7
Unternehmensgewinne

(1) Gewinne eines Unternehmens eines Vertragsstaats können nur in diesem Staat besteuert werden, es sei denn, das Unternehmen übt seine Geschäftstätigkeit im anderen Vertragsstaat durch eine dort gelegene Betriebsstätte aus. Übt das Unternehmen seine Geschäftstätigkeit auf diese Weise aus, so können seine Gewinne im anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebsstätte zugerechnet werden können.

(2) Übt ein Unternehmen eines Vertragsstaats seine Geschäftstätigkeit im anderen Vertragsstaat durch eine dort gelegene Betriebsstätte aus, so werden dieser Betriebsstätte vorbehaltlich des Absatzes 3 in jedem Vertragsstaat die Gewinne zugerechnet, die sie hätte erzielen können, wenn sie eine gleiche oder ähnliche Tätigkeit unter gleichen oder ähnlichen Bedingungen als selbständiges Unternehmen ausgeübt hätte und im Verkehr mit dem Unternehmen, dessen Betriebsstätte sie ist, völlig unabhängig gewesen wäre.

(3) Bei der Ermittlung der Gewinne einer Betriebsstätte werden die für diese Betriebsstätte entstandenen Aufwendungen, einschließlich der Geschäftsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebsstätte liegt, oder anderswo entstanden sind.

(4) Soweit es in einem Vertragsstaat üblich ist, die einer Betriebsstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile zu ermitteln, schließt Absatz 2 nicht aus, dass dieser Vertragsstaat die zu besteuernden Gewinne nach der üblichen Aufteilung ermittelt; die Gewinnaufteilung muss jedoch derart sein, dass das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

(5) Aufgrund des bloßen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebsstätte kein Gewinn zugerechnet.

(6) Bei der Anwendung der vorstehenden Absätze sind die der Betriebsstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, es bestehen ausreichende Gründe dafür, anders zu verfahren.

(7) Gehören zu den Gewinnen Einkünfte, die in anderen Artikeln dieses Abkommens behandelt werden, so werden die Bestimmungen jener Artikel durch die Bestimmungen dieses Artikels nicht berührt.

Artikel 8
Seeschifffahrt und Luftfahrt

(1) Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in dem Vertragsstaat besteuert werden, in dem sich der Ort der

tatsächlichen Geschäftsleitung des Unternehmens befindet.

(2) Für Zwecke dieses Artikels umfassen Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr auch

a) Gewinne aus der gelegentlichen Vermietung von leeren Seeschiffen oder Luftfahrzeugen und

b) Gewinne aus der Nutzung, Wartung oder Vermietung von Containern (einschließlich Trailern und zugehöriger Ausstattung für den Transport von Containern), die für den Transport von Gütern oder Waren eingesetzt werden,

wenn diese Nutzung, Wartung oder Vermietung mit dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr verbunden ist.

(3) Befindet sich der Ort der tatsächlichen Geschäftsleitung eines Unternehmens der Seeschifffahrt an Bord eines Schiffes, so gilt er als in dem Vertragsstaat gelegen, in dem der Heimathafen des Schiffes liegt, oder, wenn kein Heimathafen vorhanden ist, in dem Vertragsstaat, in dem die Person ansässig ist, die das Schiff betreibt.

(4) Absatz 1 gilt auch für Gewinne aus der Beteiligung an einem Pool, einer Betriebsgemeinschaft oder einer internationalen Betriebsstelle.

Artikel 9
Verbundene Unternehmen

(1) Wenn

a) ein Unternehmen eines Vertragsstaats unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder dem Kapital eines Unternehmens des anderen Vertragsstaats beteiligt ist oder

b) dieselben Personen unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder dem Kapital eines Unternehmens eines Vertragsstaats und eines Unternehmens des anderen Vertragsstaats beteiligt sind

und in diesen Fällen die beiden Unternehmen in ihren kaufmännischen oder finanziellen Beziehungen an vereinbarte oder auferlegte Bedingungen gebunden sind, die von denen abweichen, die unabhängige Unternehmen miteinander vereinbaren würden, so dürfen die Gewinne, die eines der Unternehmen ohne diese Bedingungen erzielt hätte, wegen dieser Bedingungen aber nicht erzielt hat, den Gewinnen dieses Unternehmens zugerechnet und entsprechend besteuert werden.

(2) Werden in einem Vertragsstaat den Gewinnen eines Unternehmens dieses Staates

Gewinne zugerechnet – und entsprechend besteuert –, mit denen ein Unternehmen des anderen Vertragsstaats in diesem Staat besteuert wurde, und handelt es sich bei den zugerechneten Gewinnen um solche, die das Unternehmen des erstgenannten Staates erzielt hätte, wenn die zwischen den beiden Unternehmen vereinbarten Bedingungen die gleichen gewesen wären, die unabhängige Unternehmen miteinander vereinbaren würden, so nimmt der andere Staat eine entsprechende Berichtigung der dort von diesen Gewinnen erhobenen Steuer vor. Bei dieser Berichtigung sind die übrigen Bestimmungen dieses Abkommens zu berücksichtigen; erforderlichenfalls werden die zuständigen Behörden der Vertragsstaaten einander konsultieren.

Artikel 10
Dividenden

(1) Dividenden, die eine in einem Vertragsstaat ansässige Gesellschaft an eine im anderen Vertragsstaat ansässige Person zahlt, können im anderen Staat besteuert werden.

(2) Diese Dividenden können jedoch auch in dem Vertragsstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber, wenn der Nutzungsberechtigte der Dividenden eine in dem anderen Vertragsstaat ansässige Person ist, nicht übersteigen:

a) 5 Prozent des Bruttobetrages der Dividenden, wenn der Nutzungsberechtigte eine Gesellschaft (jedoch keine Personengesellschaft) ist, die unmittelbar über mindestens 25 Prozent des Kapitals der die Dividenden zahlenden Gesellschaft verfügt;

b) 15 Prozent des Bruttobetrags der Dividenden, sofern diese Dividenden aus Einkünften oder Erträgen gezahlt werden, die unmittelbar oder mittelbar aus unbeweglichem Vermögen im Sinne des Artikels 6 von einem Investmentvehikel erzielt werden, das diese Einkünfte oder Erträge größtenteils jährlich ausschüttet und dessen Einkünfte oder Erträge aus dem betreffenden unbeweglichen Vermögen von der Steuer befreit sind;

c) 10 Prozent des Bruttobetrags der Dividenden in allen anderen Fällen.

Dieser Absatz berührt nicht die Besteuerung der Gesellschaft in Bezug auf die Gewinne, aus denen die Dividenden gezahlt werden.

(3) Der in diesem Artikel verwendete Ausdruck „Dividenden“ bedeutet Einkünfte aus Gesellschaftsanteilen oder anderen Rechten – ausgenommen Forderungen – mit Gewinnbeteiligung oder sonstige Einkünfte, die nach dem Recht des Staates, in dem die ausschüttende Gesellschaft ansässig ist, den Einkünften aus Gesellschaftsanteilen steuerlich gleichgestellt sind.

(4) Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragsstaat ansässige Nutzungsberechtigte im anderen Vertragsstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine gewerbliche Tätigkeit durch eine dort gelegene Betriebsstätte oder eine selbständige Arbeit durch eine dort gelegene feste Einrichtung ausübt und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebsstätte oder festen Einrichtung gehört. In diesem Fall ist Artikel 7 beziehungsweise Artikel 14 anzuwenden.

(5) Bezieht eine in einem Vertragsstaat ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Vertragsstaat, so darf dieser andere Staat weder die von der Gesellschaft gezahlten Dividenden besteuern, es sei denn, dass diese Dividenden an eine im anderen Staat ansässige Person gezahlt werden oder dass die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu einer im anderen Staat gelegenen Betriebsstätte oder festen Einrichtung gehört, noch Gewinne der Gesellschaft einer Steuer für nicht ausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nicht ausgeschütteten Gewinne ganz oder teilweise aus im anderen Staat erzielten Gewinnen oder Einkünften bestehen.

Artikel 11
Zinsen

(1) Zinsen, die aus einem Vertragsstaat stammen und an eine im anderen Vertragsstaat ansässige Person gezahlt werden, können im anderen Staat besteuert werden.

(2) Diese Zinsen können jedoch auch in dem Vertragsstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber, wenn der Nutzungsberechtigte der Zinsen im anderen Vertragsstaat ansässig ist, 10 Prozent des Bruttobetrags der Zinsen nicht übersteigen.

(3) Ungeachtet des Absatzes 2 gilt Folgendes:

a) Zinsen, die aus einem Vertragsstaat stammen und an die Regierung des anderen Vertragsstaats gezahlt werden, sind im erstgenannten Staat von der Steuer befreit;

b) Zinsen, die aus einem Vertragsstaat stammen und für ein durch Gewährleistungen des anderen Vertragsstaats oder eines vollständig in seinem Besitz befindlichen Finanzinstituts gedecktes Darlehen gezahlt werden, sind im erstgenannten Staat von der Steuer befreit;

c) Zinsen, die aus China stammen und an die Deutsche Bundesbank, die Kreditanstalt für Wiederaufbau oder die DEG-Deutsche Investitions- und Entwicklungsgesellschaft mbH oder sonstige öffentliche Kreditinstitute der Bundesrepublik Deutschland gezahlt werden, auf die sich die zuständigen Behörden beider Staaten verständigen, sind von der chinesischen Steuer befreit;

d) Zinsen, die aus der Bundesrepublik Deutschland stammen und an

(i) die Chinesische Volksbank,
(ii) die Chinesische Entwicklungsbank,
(iii) die Chinesische Landwirtschaftliche Entwicklungsbank,
(iv) die Chinesische Bank für Ein- und Ausfuhren,
(v) den Nationalen Sozialversicherungsrat,
(vi) die China Investment Corporation oder
(vii) sonstige öffentliche Kreditinstitute des chinesischen Staats, auf die sich die zuständigen Behörden beider Staaten verständigen,

gezahlt werden, sind von der deutschen Steuer befreit.

(4) Ungeachtet des Absatzes 2 können Zinsen im Sinne des Absatzes 1 nur in dem Vertragsstaat besteuert werden, in dem der Empfänger ansässig ist, wenn der Empfänger der Zinsen der Nutzungsberechtigte ist und die Zinszahlung in Zusammenhang mit dem Verkauf gewerblicher oder wissenschaftlicher Ausrüstung auf Kredit steht.

(5) Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus Forderungen jeder Art, auch wenn die Forderungen durch Pfandrechte an Grundstücken gesichert sind, und insbesondere Einkünfte aus öffentlichen Anleihen und aus Obligationen einschließlich der damit verbundenen Aufgelder und der Gewinne aus Losanleihen. Zuschläge für verspätete Zahlung gelten nicht als Zinsen im Sinne dieses Artikels.

(6) Die Absätze 1 bis 4 sind nicht anzuwenden, wenn der in einem Vertragsstaat ansässige Nutzungsberechtigte im anderen Vertragsstaat, aus dem die Zinsen stammen, eine gewerbliche Tätigkeit durch eine dort gelegene Betriebsstätte oder eine selbständige Arbeit durch eine dort gelegene feste Einrichtung ausübt und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebsstätte oder festen Einrichtung gehört. In diesem Fall ist Artikel 7 beziehungsweise Artikel 14 anzuwenden.

(7) Zinsen gelten dann als aus einem Vertragsstaat stammend, wenn der Schuldner eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Zinsen, ohne Rücksicht darauf, ob er in einem Vertragsstaat ansässig ist oder nicht, in einem Vertragsstaat eine Betriebsstätte oder eine feste Einrichtung und ist die Schuld, für die die Zinsen gezahlt werden, für Zwecke der Betriebsstätte oder der festen Einrichtung eingegangen worden und trägt die Betriebsstätte oder die feste Einrichtung die Zinsen, so gelten die Zinsen als aus dem Staat stammend, in dem die Betriebsstätte oder die feste Einrichtung liegt.

(8) Bestehen zwischen dem Schuldner und dem Nutzungsberechtigten oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigt deshalb der Zinsbetrag im Verhältnis zur zugrunde liegenden Forderung den Betrag, den Schuldner und Nutzungsberechtigter ohne diese Beziehungen vereinbart hätten, so gilt dieser Artikel nur für den letztgenannten Betrag. In diesem Fall kann der übersteigende Betrag nach dem Recht eines jeden Vertragsstaats und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 12
Lizenzgebühren

(1) Lizenzgebühren, die aus einem Vertragsstaat stammen und deren Nutzungsberechtigter eine im anderen Vertragsstaat ansässige Person ist, können im anderen Staat besteuert werden.

(2) Diese Lizenzgebühren können jedoch auch in dem Vertragsstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber, wenn der Nutzungsberechtigte der Lizenzgebühren im anderen Vertragsstaat ansässig ist, nicht höher sein als

a) 10 Prozent des Bruttobetrags der Lizenzgebühren im Falle von Lizenzgebühren im Sinne des Absatzes 3 Buchstabe a und

a) 10 Prozent des angepassten Betrags im Falle von Lizenzgebühren im Sinne des Absatzes 3 Buchstabe b. Im Sinne dieses Buchstabens bedeutet „angepasster Betrag" 60 Prozent des Bruttobetrags der Lizenzgebühren.

(3) Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet

a) Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten an literarischen, künstlerischen oder wissenschaftlichen Werken, einschließlich kinematografischer Filme sowie Filmeoder Bänder für Hörfunk- oder Fernsehübertragungen, von Patenten, Warenzeichen, Mustern oder Modellen, Plänen, geheimen Formeln oder Verfahren oder für Informationen über gewerbliche, kaufmännische oder wissenschaftliche Erfahrungen (Know-how) gezahlt werden, und

b) Vergütungen jeder Art, die für die Benutzung oder das auf Recht auf Benutzung industrieller, gewerblicher oder wissenschaftlicher Ausrüstung gezahlt werden.

(4) Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragsstaat ansässige Nutzungsberechtigte im anderen Vertragsstaat, aus dem die Lizenzgebühren stammen, eine gewerbliche Tätigkeit durch eine dort gelegene Betriebsstätte oder eine selbständige Arbeit durch eine dort gelegene feste Einrichtung ausübt und die Rechte oder Vermögenswerte, für die die Lizenzgebühren gezahlt werden, tatsächlich zu dieser Betriebsstätte oder festen Einrichtung gehören. In diesem Fall ist Artikel 7 beziehungsweise Artikel 14 anzuwenden.

(5) Lizenzgebühren gelten dann als aus einem Vertragsstaat stammend, wenn der Schuldner eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Lizenzgebühren, ohne Rücksicht darauf, ob er in einem Vertragsstaat ansässig ist oder nicht, in einem Vertragsstaat eine Betriebsstätte oder eine feste Einrichtung und ist die Verpflichtung zur Zahlung der Lizenzgebühren für Zwecke der Betriebsstätte oder festen Einrichtung eingegangen worden und trägt die Betriebsstätte oder feste Einrichtung die Lizenzgebühren, so gelten die Lizenzgebühren als aus dem Staat stammend, in dem die Betriebsstätte oder feste Einrichtung

mittelbar gehalten hat.

(6) Gewinne aus der Veräußerung von in den Absätzen 1 bis 5 nicht genanntem Vermögen können nur in dem Vertragsstaat besteuert werden, in dem der Veräußerer ansässig ist.

Artikel 14
Selbständige Arbeit

(1) Einkünfte, die eine in einem Vertragsstaat ansässige natürliche Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit bezieht, können nur in diesem Staat besteuert werden, mit Ausnahme folgender Fälle, in denen diese Einkünfte auch im anderen Vertragsstaat besteuert werden können:

a) Steht der Person im anderen Vertragsstaat für die Ausübung ihrer Tätigkeit gewöhnlich eine feste Einrichtung zur Verfügung, können die Einkünfte insoweit im anderen Staat besteuert werden, als sie dieser festen Einrichtung zugerechnet werden können.

b) Hält sich die Person innerhalb eines Zeitraums von 12 Monaten, der im betreffenden Steuerjahr beginnt oder endet, insgesamt mindestens 183 Tage im anderen Staat auf, können die Einkünfte insoweit im anderen Staat besteuert werden, als sie aus der im anderen Staat ausgeübten Tätigkeit stammen.

(2) Der Ausdruck „freier Beruf" umfasst insbesondere die selbständig ausgeübte wissenschaftliche, literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Ärzte, Rechtsanwälte, Ingenieure, Architekten, Zahnärzte und Buchsachverständigen.

Artikel 15
Einkünfte aus unselbständiger Arbeit

(1) Vorbehaltlich der Artikel 16, 18 und 19 können Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragsstaat ansässige Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, die Arbeit wird im anderen Vertragsstaat ausgeübt. Wird die Arbeit dort ausgeübt, so können die dafür bezogenen Vergütungen im anderen Staat besteuert werden.

(2) Ungeachtet des Absatzes 1 können Vergütungen, die eine in einem Vertragsstaat ansässige Person für eine im anderen Vertragsstaat ausgeübte unselbstständige Arbeit bezieht, nur im erstgenannten Staat besteuert werden, wenn

a) der Empfänger sich im anderen Staat insgesamt nicht länger als 183 Tage innerhalb eines Zeitraums von 12 Monaten, der während des betreffenden Steuerjahres beginnt oder endet, aufhält und

b) die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht im anderen Staat ansässig ist, und

c) die Vergütungen nicht von einer Betriebsstätte oder einer festen Einrichtung getragen werden, die der Arbeitgeber im anderen Staat hat.

(3) Ungeachtet der vorstehenden Bestimmungen dieses Artikels können Vergütungen für eine unselbständige Tätigkeit, die an Bord eines im internationalen Verkehr betriebenen Seeschiffs oder Luftfahrzeugs ausgeübt wird, in dem Vertragsstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet, das das Seeschiff oder Luftfahrzeug betreibt.

Artikel 16
Aufsichtsrats- und Verwaltungsratsvergütungen

Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in einem Vertragsstaat ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrats einer Gesellschaft bezieht, die im anderen Vertragsstaat ansässig ist, können im anderen Staat besteuert werden.

Artikel 17
Künstler und Sportler

(1) Ungeachtet der Artikel 7, 14 und 15 können Einkünfte, die eine in einem Vertragsstaat ansässige Person als Künstler, wie Bühnen-, Film-, Rundfunk- und Fernsehkünstler sowie Musiker, oder als Sportler aus ihrer im anderen Vertragsstaat persönlich ausgeübten Tätigkeit bezieht, im anderen Staat besteuert werden.

(2) Fließen Einkünfte aus einer von einem Künstler oder Sportler in dieser Eigenschaft persönlich ausgeübten Tätigkeit nicht dem Künstler oder Sportler selbst, sondern einer anderen Person zu, so können diese Einkünfte ungeachtet der Artikel 7, 14 und 15 in dem Vertragsstaat besteuert werden, in dem der Künstler oder Sportler seine Tätigkeit ausübt.

(3) Ungeachtet der Absätze 1 und 2 können Einkünfte, die ein in einem Vertragsstaat ansässiger Künstler oder Sportler aus einer Tätigkeit bezieht, die er im Rahmen eines zwischen den Regierungen beider Vertragsstaaten vereinbarten kulturellen Austauschprogramms im anderen Vertragsstaat ausübt, nicht im anderen Staat besteuert werden.

Artikel 18
Ruhegehälter

(1) Vorbehaltlich des Artikels 19 Absatz 2 können Ruhegehälter und ähnliche Vergütungen oder Renten, die eine in einem Vertragsstaat ansässige Person aus dem anderen Vertragsstaat erhält, nur im erstgenannten Staat besteuert werden.

(2) Ungeachtet des Absatzes 1 können Ruhegehälter und andere Vergütungen, die im Rahmen einer öffentlichen Vorsorgeeinrichtung gezahlt werden, die zum Sozialversicherungssystem eines Vertragsstaats oder eines seiner Gebietskörperschaften gehört, nur in diesem Staat besteuert werden.

Artikel 19
Öffentlicher Dienst

(1) a) Gehälter, Löhne und ähnliche Vergütungen, ausgenommen Ruhegehälter, die von einem Vertragsstaat oder einer seiner Gebietskörperschaften an eine natürliche Person für diesem Staat oder dieser Gebietskörperschaft geleistete Dienste gezahlt werden, können nur in diesem Staat besteuert werden.

b) Diese Gehälter, Löhne und ähnlichen Vergütungen können jedoch nur im anderen Vertragsstaat besteuert werden, wenn die Dienste in diesem Staat geleistet werden und die natürliche Person in diesem Staat ansässig ist und

(i) ein Staatsangehöriger dieses Staates ist oder

(ii) nicht ausschließlich deshalb in diesem Staat ansässig geworden ist, um die Dienste zu leisten.

(2) a) Ungeachtet des Absatzes 1 können Ruhegehälter und ähnliche Vergütungen, die von einem Vertragsstaat oder einer seiner Gebietskörperschaften oder aus einem von diesem Staat oder dieser Gebietskörperschaft errichteten Sondervermögen an eine natürliche Person für diesem Staat oder dieser Gebietskörperschaft geleistete Dienste gezahlt werden, nur in diesem Staat besteuert werden.

b) Diese Ruhegehälter und ähnlichen Vergütungen können jedoch nur im anderen Vertragsstaat besteuert werden, wenn die natürliche Person in diesem Staat ansässig ist und ein Staatsangehöriger dieses Staates ist.

(3) Auf Gehälter, Löhne, Ruhegehälter und ähnliche Vergütungen für Dienstleistungen, die im Zusammenhang mit einer Geschäftstätigkeit eines Vertragsstaats oder einer seiner Gebietskörperschaften erbracht werden, sind die Artikel 15, 16, 17 oder 18 anzuwenden.

Artikel 20
Gastprofessoren, Lehrer und Studenten

(1) Eine natürliche Person, die sich auf Einladung eines Vertragsstaats oder einer Universität, Hochschule, Schule, eines Museums oder einer anderen kulturellen Einrichtung dieses Vertragsstaats oder im Rahmen eines amtlichen Kulturaustausches in diesem Vertragsstaat höchstens zwei Jahre lang lediglich zur Ausübung einer Lehrtätigkeit, zum Halten von Vorlesungen oder zur Ausübung einer Forschungstätigkeit an dieser Einrichtung aufhält und die im anderen Vertragsstaat ansässig ist oder dort unmittelbar vor der Einreise in den erstgenannten Staat ansässig war, ist in dem erstgenannten Staat mit ihren für diese Tätigkeit bezogenen Vergütungen von der Steuer befreit, vorausgesetzt, dass diese Vergütungen von außerhalb dieses Staates bezogen werden. Übersteigt die Dauer des Aufenthalts zwei Jahre, kann die Vergütung für diese Tätigkeit ab Aufenthaltsbeginn im erstgenannten Staat besteuert werden.

(2) Absatz 1 gilt nicht für Einkünfte aus Forschungstätigkeit, wenn die Forschungstätigkeit nicht im öffentlichen Interesse, sondern in erster Linie zum privaten Nutzen einer bestimmten Person oder bestimmter Personen ausgeübt wird.

(3) Zahlungen, die ein Student, Praktikant oder Lehrling, der sich in einem Vertragsstaat ausschließlich zum Studium oder zur Ausbildung aufhält und der im anderen Vertragsstaat ansässig ist oder dort unmittelbar vor der Einreise in den erstgenannten Staat ansässig war, für seinen Unterhalt, sein Studium oder seine Ausbildung erhält, dürfen im erstgenannten Staat nicht besteuert werden, sofern diese Zahlungen aus Quellen außerhalb dieses Staates stammen.

Artikel 21
Andere Einkünfte

(1) Einkünfte einer in einem Vertragsstaat ansässigen Person, die in den vorstehenden Artikeln nicht behandelt wurden, können ohne Rücksicht auf ihre Herkunft nur in diesem Staat besteuert werden.

(2) Absatz 1 ist auf andere Einkünfte als solche aus unbeweglichem Vermögen im Sinne des Artikels 6 Absatz 2 nicht anzuwenden, wenn der in einem Vertragsstaat ansässige Empfänger im anderen Vertragsstaat eine Geschäftstätigkeit durch eine dort gelegene Betriebsstätte oder eine selbständige Arbeit durch eine dort gelegene feste Einrichtung ausübt und die Rechte oder Vermögenswerte, für die die Einkünfte gezahlt werden, tatsächlich zu dieser Betriebsstätte oder festen Einrichtung gehören. In diesem Fall ist Artikel 7 beziehungsweise Artikel 14 anzuwenden.

Artikel 22
Vermögen

(1) Unbewegliches Vermögen im Sinne des Artikels 6, das einer in einem Vertragsstaat

ansässigen Person gehört und im anderen Vertragsstaat liegt, kann im anderen Staat besteuert werden.

(2) Bewegliches Vermögen, das Betriebsvermögen einer Betriebsstätte ist, die ein Unternehmen eines Vertragsstaats im anderen Vertragsstaat hat, kann im anderen Staat besteuert werden.

(3) Seeschiffe und Luftfahrzeuge, die im internationalen Verkehr betrieben werden, sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe oder Luftfahrzeuge dient, können nur in dem Vertragsstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

(4) Alle anderen Vermögensteile einer in einem Vertragsstaat ansässigen Person können nur in diesem Staat besteuert werden.

Artikel 23
Methoden zur Vermeidung der Doppelbesteuerung

(1) In China wird die Doppelbesteuerung in Übereinstimmung mit chinesischem Recht wie folgt vermieden:

a) Bezieht eine in China ansässige Person Einkünfte aus der Bundesrepublik Deutschland, kann die nach diesem Abkommen auf diese Einkünfte in der Bundesrepublik Deutschland zu entrichtende Steuer auf die bei dieser Person erhobene chinesische Steuer angerechnet werden. Die Höhe der Anrechnung darf jedoch den nach den chinesischen Steuergesetzen und -vorschriften berechneten Betrag der chinesischen Steuer auf diese Einkünfte nicht übersteigen.

b) Handelt es sich bei den Einkünften um Dividenden, die von einer in der Bundesrepublik Deutschland ansässigen Gesellschaft an eine in China ansässige Gesellschaft gezahlt werden, die mindestens 20 Prozent der Anteile der die Dividenden ausschüttenden Gesellschaft besitzt, wird bei der Anrechnung die von der ausschüttenden Gesellschaft für ihre Einkünfte an die Bundesrepublik Deutschland entrichtete Steuer berücksichtigt.

(2) In der Bundesrepublik Deutschland wird die Doppelbesteuerung in Übereinstimmung mit deutschem Recht wie folgt vermieden:

a) Von der Bemessungsgrundlage der deutschen Steuer werden die Einkünfte aus China sowie die in China gelegenen Vermögenswerte ausgenommen, die nach diesem Abkommen in China besteuert werden können, sofern nicht eine Steueranrechnung nach Buchstabe b zulässig ist.

Für Einkünfte aus Dividenden gilt die vorstehende Bestimmung nur dann, wenn diese

Dividenden an eine in der Bundesrepublik Deutschland ansässige Gesellschaft (jedoch nicht an eine Personengesellschaft) von einer in China ansässigen Gesellschaft gezahlt werden, deren Kapital zu mindestens 25 Prozent unmittelbar der deutschen Gesellschaft gehört, und sie bei Ermittlung der Gewinne der ausschüttenden Gesellschaft nicht abgezogen wurden.

Für die Zwecke der Steuern vom Vermögen werden von der Bemessungsgrundlage der deutschen Steuer ebenfalls Beteiligungen ausgenommen, deren Ausschüttungen, falls solche gezahlt würden, nach den vorstehenden Sätzen von der Steuerbemessungsgrundlage auszunehmen wären.

b) Auf die deutsche Steuer vom Einkommen für die folgenden Einkünfte wird unter Beachtung der Vorschriften des deutschen Steuerrechts über die Anrechnung ausländischer Steuern die chinesische Steuer angerechnet, die nach chinesischem Recht und in Übereinstimmung mit diesem Abkommen gezahlt wurde:

(i) Dividenden, die nicht unter Buchstabe a fallen,
(ii) Zinsen,
(iii) Lizenzgebühren,
(iv) Einkünfte, die nach Artikel 13 Absätze 4 und 5 in China besteuert werden können,
(v) Aufsichtsrats- und Verwaltungsratsvergütungen,
(vi) Einkünfte, die nach Artikel 17 besteuert werden können.

c) Auf Einkünfte im Sinne der Artikel 7 und 10 und auf die diesen Einkünften zugrunde liegenden Vermögenswerte ist statt Buchstabe a Buchstabe b anzuwenden, wenn die in der Bundesrepublik Deutschland ansässige Person nicht nachweist, dass die Betriebsstätte in dem Wirtschaftsjahr, in dem sie den Gewinn erzielt hat, oder die in China ansässige Gesellschaft in dem Wirtschaftsjahr, für das sie die Ausschüttung vorgenommen hat, ihre Bruttoerträge ausschließlich oder fast ausschließlich aus unter § 8 Absatz 1 Nr. 1 bis 6 des deutschen Außensteuergesetzes fallenden Tätigkeiten bezogen hat; Gleiches gilt für unbewegliches Vermögen, das einer Betriebsstätte dient, und die daraus erzielten Einkünfte (Artikel 6 Absatz 4) sowie für Gewinne aus der Veräußerung dieses unbeweglichen Vermögens (Artikel 13 Absatz 1) und des beweglichen Vermögens, das Betriebsvermögen der Betriebsstätte darstellt (Artikel 13 Absatz 2).

d) Die Bundesrepublik Deutschland behält aber das Recht, die nach diesem Abkommen von der deutschen Steuer ausgenommenen Einkünfte und Vermögenswerte bei der Festsetzung ihres Steuersatzes zu berücksichtigen.

e) Ungeachtet des Buchstabens a wird die Doppelbesteuerung durch Steueranrechnung nach Buchstabe b vermieden,

(i) wenn in den Vertragsstaaten Einkünfte oder Vermögen unterschiedlichen Abkommensbestimmungen zugeordnet oder verschiedenen Personen zugerechnet werden (außer nach Artikel 9) und dieser Konflikt sich nicht durch ein Verfahren nach Artikel 25 Absatz 3 regeln lässt und wenn aufgrund dieser unterschiedlichen Zuordnung oder Zurechnung die betreffenden Einkünfte oder Vermögenswerte unbesteuert blieben oder niedriger als ohne diesen Konflikt besteuert würden oder

(ii) wenn die zuständige chinesische Behörde nach gehöriger Konsultation mit der zuständigen deutschen Behörde dieser schriftlich andere Einkünfte notifiziert, bei denen sie die Anrechnungsmethode nach Buchstabe b anzuwenden beabsichtigt. Die Doppelbesteuerung der notifizierten Einkünfte wird dann durch Steueranrechnung ab dem ersten Tag des Kalenderjahrs vermieden, das dem Kalenderjahr folgt, in dem die Notifikation übermittelt wurde.

Artikel 24
Gleichbehandlung

(1) Staatsangehörige eines Vertragsstaats dürfen im anderen Vertragsstaat keiner Besteuerung oder damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender ist als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen Staatsangehörige des anderen Staates unter gleichen Verhältnissen insbesondere hinsichtlich der Ansässigkeit unterworfen sind oder unterworfen werden können. Diese Bestimmung gilt ungeachtet des Artikels 1 auch für Personen, die in keinem der beiden Vertragsstaaten ansässig sind.

(2) Die Besteuerung einer Betriebsstätte, die ein Unternehmen eines Vertragsstaats im anderen Vertragsstaat hat, darf in dem anderen Staat nicht ungünstiger sein als die Besteuerung von Unternehmen des anderen Staates, die die gleiche Tätigkeit ausüben. Diese Bestimmung ist nicht so auszulegen, als verpflichte sie einen Vertragsstaat, den in dem anderen Vertragsstaat ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermäßigungen aufgrund des Personenstands oder der Familienlasten zu gewähren, die er seinen ansässigen Personen gewährt.

(3) Sofern nicht Artikel 9 Absatz 1, Artikel 11 Absatz 8 oder Artikel 12 Absatz 6 anzuwenden ist, sind Zinsen, Lizenzgebühren und andere Entgelte, die ein Unternehmen eines Vertragsstaats an eine im anderen Vertragsstaat ansässige Person zahlt, bei der Ermittlung der steuerpflichtigen Gewinne dieses Unternehmens unter den gleichen Bedingungen wie Zahlungen an eine im erstgenannten Staat ansässige Person abzugsfähig. Ebenso sind Schulden, die ein Unternehmen eines Vertragsstaats gegenüber einer im anderen Vertragsstaat ansässigen Person hat, bei der Ermittlung des steuerpflichtigen Vermögens dieses Unternehmens unter den gleichen Bedingungen wie Schulden gegenüber einer im erstgenannten Staat ansässigen Person abzugsfähig.

(4) Unternehmen eines Vertragsstaats, deren Kapital ganz oder teilweise unmittelbar oder mittelbar einer im anderen Vertragsstaat ansässigen Person oder mehreren solchen Personen gehört oder ihrer Kontrolle unterliegt, dürfen im erstgenannten Staat keiner Besteuerung oder damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender ist als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen andere ähnliche Unternehmen des erstgenannten Staates unterworfen sind oder unterworfen werden können.

(5) Der Artikel gilt ungeachtet des Artikels 2 für Steuern jeder Art und Bezeichnung.

Artikel 25
Verständigungsverfahren

(1) Ist eine Person der Auffassung, dass Maßnahmen eines Vertragsstaats oder beider Vertragsstaaten für sie zu einer Besteuerung führen oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach dem innerstaatlichen Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen Behörde des Vertragsstaats, in dem sie ansässig ist, oder, sofern ihr Fall von Artikel 24 Absatz 1 erfasst wird, der zuständigen Behörde des Vertragsstaats unterbreiten, dessen Staatsangehöriger sie ist. Der Fall muss innerhalb von drei Jahren nach der ersten Mitteilung der Maßnahme unterbreitet werden, die zu einer dem Abkommen nicht entsprechenden Besteuerung führt.

(2) Hält die zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragsstaats so zu regeln, dass eine dem Abkommen nicht entsprechende Besteuerung vermieden wird. Die erzielte Einigung ist ungeachtet der Fristen des innerstaatlichen Rechts der Vertragsstaaten umzusetzen.

(3) Die zuständigen Behörden der Vertragsstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch gemeinsam darüber beraten, wie eine Doppelbesteuerung in Fällen vermieden werden kann, die im Abkommen nicht behandelt sind.

(4) Die zuständigen Behörden der Vertragsstaaten können zur Herbeiführung einer Einigung im Sinne der vorstehenden Absätze unmittelbar miteinander verkehren. Bei Bedarf können sich Vertreter der zuständigen Behörden und der zuständigen Steuerverwaltungen zu einem Meinungsaustausch treffen.

Artikel 26
Informationsaustausch

(1) Die zuständigen Behörden der Vertragsstaaten tauschen die Informationen aus, die zur Durchführung dieses Abkommens oder zur Anwendung oder Durchsetzung des innerstaatlichen Rechts betreffend Steuern jeder Art und Bezeichnung, die für Rechnung der Vertragsstaaten oder ihrer Gebietskörperschaften erhoben werden, voraussichtlich erheblich sind, soweit die diesem Recht entsprechende Besteuerung nicht dem Abkommen widerspricht. Der Informationsaustausch ist durch die Artikel 1 und 2 nicht eingeschränkt.

(2) Alle Informationen, die ein Vertragsstaat nach Absatz 1 erhalten hat, sind ebenso geheim zu halten wie die aufgrund des innerstaatlichen Rechts dieses Staates beschafften Informationen und dürfen nur den Personen oder Behörden (einschließlich der Gerichte und der Verwaltungsbehörden) zugänglich gemacht werden, die mit der Veranlagung oder Erhebung, der Vollstreckung oder Strafverfolgung, der Entscheidung über Rechtsmittel

hinsichtlich der in Absatz 1 genannten Steuern oder mit der Aufsicht darüber mit dem Ziel der ordnungsgemäßen Anwendung dieses Abkommens und des Steuerrechts befasst sind. Diese Personen oder Behörden dürfen die Informationen nur für diese Zwecke verwenden. Sie dürfen die Informationen in öffentlichen Gerichtsverfahren oder in Gerichtsentscheidungen offenlegen.

(3) Die Absätze 1 und 2 sind nicht so auszulegen, als verpflichteten sie einen Vertragsstaat,

a) Verwaltungsmaßnahmen durchzuführen, die von den Gesetzen oder der Verwaltungspraxis dieses oder des anderen Vertragsstaats abweichen;

b) Informationen zu erteilen, die nach den Gesetzen oder im üblichen Verwaltungsverfahren dieses oder des anderen Vertragsstaats nicht beschafft werden können;

c) Informationen zu erteilen, die ein Handels-; Industrie-, Gewerbe- oder Berufsgeheimnis oder ein Geschäftsverfahren preisgeben würden oder deren Erteilung der öffentlichen Ordnung (ordre public) widerspräche.

(4) Ersucht ein Vertragsstaat gemäß diesem Artikel um Informationen, so nutzt der andere Vertragsstaat die ihm zur Verfügung stehenden Möglichkeiten zur Beschaffung der erbetenen Informationen, selbst wenn er diese Informationen für seine eigenen steuerlichen Zwecke nicht benötigt. Die im vorstehenden Satz enthaltene Verpflichtung unterliegt den Beschränkungen gemäß Absatz 3, wobei diese Beschränkungen in keinem Fall so auszulegen sind, als könne ein Vertragsstaat die Erteilung von Informationen nur deshalb ablehnen, weil er kein innerstaatliches Interesse an diesen Informationen hat.

(5) Absatz 3 ist nicht so auszulegen, als könne ein Vertragsstaat die Erteilung von Informationen nur deshalb ablehnen, weil sich die Informationen bei einer Bank, einem sonstigen Finanzinstitut, einem Bevollmächtigten, Vertreter oder Treuhänder befinden oder weil sie sich auf das Eigentum an einer Person beziehen.

Artikel 27
Amtshilfe bei der Erhebung von Steuern

(1) Die Vertragsstaaten leisten sich gegenseitige Amtshilfe bei der Erhebung von Steueransprüchen. Die zuständigen Behörden der Vertragsstaaten können in gegenseitigem Einvernehmen regeln, wie dieser Artikel durchzuführen ist.

(2) Dieser Artikel ist in keinem Fall so auszulegen, als verpflichte er einen Vertragsstaat,

a) Verwaltungsmaßnahmen durchzuführen, die vom Recht oder der Verwaltungspraxis dieses oder des anderen Vertragsstaats abweichen;

b) Maßnahmen durchzuführen, die der öffentlichen Ordnung (ordre public)

widersprächen.

Artikel 28
Verfahrensregeln für die Quellenbesteuerung

(1) Werden in einem Vertragsstaat die Steuern von Dividenden, Zinsen, Lizenzgebühren oder sonstigen von einer im anderen Vertragsstaat ansässigen Person bezogenen Einkünften im Abzugsweg erhoben, so wird das Recht des erstgenannten Staates zur Vornahme des Steuerabzugs zu dem nach seinem innerstaatlichen Recht vorgesehenen Satz durch dieses Abkommen nicht berührt. Die im Abzugsweg erhobene Steuer ist auf Antrag des Steuerpflichtigen zu erstatten, wenn sie nach diesem Abkommen entfällt oder ermäßigt ist.

(2) Die Anträge auf Erstattung müssen innerhalb der Fristen eingereicht werden, die dem Recht des Vertragsstaats entsprechen, aus dem die Einkünfte stammen.

(3) Ungeachtet des Absatzes 1 sieht jeder Vertragsstaat entsprechende Verfahren vor,

a) damit Zahlungen von Einkünften, die nach diesem Abkommen im Quellenstaat keiner Steuer unterliegen, ohne Steuerabzug erfolgen können;

b) damit Zahlungen von Einkünften, die nach diesem Abkommen im Quellenstaat einer ermäßigten Steuer unterliegen, mit dem Steuerabzug erfolgen können, der im betreffenden Artikel vorgesehen ist.

(4) Der Vertragsstaat, aus dem die Einkünfte stammen, kann eine Bescheinigung der zuständigen Behörde über die Ansässigkeit im anderen Vertragsstaat verlangen.

(5) Die zuständigen Behörden können in gegenseitigem Einvernehmen die Durchführung dieses Artikels regeln und gegebenenfalls andere Verfahren zur Durchführung der im Abkommen vorgesehenen Steuerermäßigungen oder -befreiungen festlegen.

Artikel 29
Sonstige Vorschriften

(1) Die Vergünstigungen dieses Abkommens werden nicht gewährt, wenn bestimmte Geschäftsvorgänge oder Gestaltungen vornehmlich zur Inanspruchnahme dieser Vergünstigungen vorgenommen werden und die Inanspruchnahme der Vergünstigungen dem Sinn und Zweck der einschlägigen Bestimmungen dieses Abkommens zuwiderlaufen würde.

(2) Dieses Abkommen ist nicht so auszulegen, als hindere es einen Vertragsstaat, seine innerstaatlichen Rechtsvorschriften zur Verhinderung der Steuerumgehung oder Steuerhinterziehung anzuwenden.

(3) Ist eine Person der Auffassung, dass die Anwendung der vorstehenden Absätze für sie zu einer nicht abkommensgemäßen Besteuerung führt, kann sie ein Verständigungsverfahren beantragen.

Artikel 30
Mitglieder diplomatischer Missionen und konsularischer Vertretungen

Dieses Abkommen berührt nicht die steuerlichen Vorrechte, die den Mitgliedern diplomatischer Missionen und konsularischer Vertretungen nach den allgemeinen Regeln des Völkerrechts oder aufgrund besonderer Übereinkünfte zustehen.

Artikel 31
Protokoll

Das anliegende Protokoll ist Bestandteil dieses Abkommens.

Artikel 32
Inkrafttreten

(1) Dieses Abkommen tritt dreißig Tage nach dem Tag in Kraft, an dem die beiden Vertragsparteien einander notifiziert haben, dass die innerstaatlichen rechtlichen Voraussetzungen für das Inkrafttreten erfüllt sind. Maßgeblich ist der Tag des Eingangs der letzten Notifikation.

(2) Dieses Abkommen ist anzuwenden

a) bei den im Abzugsweg erhobenen Steuern auf die Beträge, die am oder nach dem 1. Januar des Kalenderjahrs gezahlt werden, das dem Jahr folgt, in dem das Abkommen in Kraft getreten ist;

b) bei den übrigen Steuern auf die Steuerjahre, die am oder nach dem 1. Januar des Kalenderjahrs beginnen, das dem Jahr folgt, in dem das Abkommen in Kraft getreten ist.

(3) Mit Inkrafttreten dieses Abkommens tritt das am 10. Juni 1985 in Bonn unterzeichnete Abkommen zwischen der Bundesrepublik Deutschland und der Volksrepublik China zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen außer Kraft. Auf Sachverhalte, die vor dem Inkrafttreten dieses Abkommens liegen, bleiben die Bestimmungen des am 10. Juni 1985 in Bonn unterzeichneten Abkommens anwendbar. In jedem Fall gelten die Bestimmungen des am 10. Juni 1985 in Bonn unterzeichneten Abkommens bis zur in Absatz 2 geregelten Anwendbarkeit dieses Abkommens fort.

Artikel 33
Kündigung

Dieses Abkommen bleibt auf unbestimmte Zeit in Kraft, jedoch kann jeder der Vertragsstaaten bis zum 30. Juni eines jeden Kalenderjahrs nach Ablauf von fünf Jahren, vom Tag des

Inkrafttretens an gerechnet, das Abkommen gegenüber dem anderen Vertragsstaat auf diplomatischem Weg schriftlich kündigen; in diesem Fall ist das Abkommen nicht mehr anzuwenden

a) bei den im Abzugsweg erhobenen Steuern auf die Beträge, die am oder nach dem 1. Januar des Kalenderjahrs gezahlt werden, das auf das Kündigungsjahr folgt;

b) bei den übrigen Steuern auf die Steuerjahre, die am oder nach dem 1. Januar des Kalenderjahrs beginnen, das auf das Kündigungsjahr folgt.

Maßgebend für die Berechnung der Frist (der 30. Juni eines jeden Kalenderjahres) ist der Tag des Eingangs der Kündigung bei dem anderen Vertragsstaat.

Zu Urkund dessen haben die hierzu gehörig befugten Unterzeichneten dieses Abkommen unterzeichnet.

Geschehen zu Berlin am 28. März 2014 in zwei Urschriften, jede in deutscher, chinesischer und englischer Sprache, wobei jeder Wortlaut verbindlich ist. Bei unterschiedlicher Auslegung des deutschen und des chinesischen Wortlauts ist der englische Wortlaut maßgebend.

Für die
Bundesrepublik Deutschland

Für die
Volksrepublik China

Protokoll

Bei der Unterzeichnung des Abkommens zwischen der Bundesrepublik Deutschland und der Volksrepublik China zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen am 28. März 2014 (im Folgenden als „das Abkommen" bezeichnet) haben beide Seiten die nachstehenden Bestimmungen vereinbart, die Bestandteil des Abkommens sind:

1. Zum Ausdruck „Vertragsstaat":

In Bezug auf die Bundesrepublik Deutschland schließt der Ausdruck „Vertragsstaat" die „Länder" ein. Der Ausdruck „Länder" bezeichnet die Länder gemäß dem Grundgesetz für die Bundesrepublik Deutschland.

2. Zu Artikel 7:

Die Vertragsstaaten äußerten ihre Bereitschaft, sich bei der Auslegung und Anwendung dieses Artikels auf den Kommentar zum OECD-Musterabkommen (2008) zu beziehen.

3. Zu Artikel 10 Absatz 2 Buchstabe b:

In der Bundesrepublik Deutschland ist ein Investmentvehikel eine Gesellschaft gemäß § 1 Absatz 1 des Gesetzes über deutsche Immobilien-Aktiengesellschaften mit börsennotierten Anteilen (REIT-Gesetz).

4. Zu den Artikeln 10 und 11:

Ungeachtet der Artikel 10 und 11 dieses Abkommens können Dividenden und Zinsen in dem Vertragsstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden, wenn sie

a) auf Rechten oder Forderungen mit Gewinnbeteiligung, einschließlich der Einkünfte eines stillen Gesellschafters aus seiner Beteiligung als stiller Gesellschafter oder der Einkünfte aus partiarischen Darlehen oder Gewinnobligationen im Sinne des Steuerrechts der Bundesrepublik Deutschland, beruhen und

b) bei der Ermittlung der Gewinne des Schuldners dieser Einkünfte abzugsfähig sind.

5. Zu Artikel 19:

a) Die Absätze 1 und 2 gelten auch für Gehälter, Löhne und ähnliche Vergütungen sowie

Ruhegehälter, die an natürliche Personen für der Deutschen Bundesbank oder der Volksbank China geleistete Dienste gezahlt werden.

b) Absatz 1 gilt entsprechend für Vergütungen, die im Rahmen eines Programms der wirtschaftlichen Zusammenarbeit eines Vertragsstaats oder einer seiner Gebietskörperschaften aus ausschließlich von diesem Staat oder der Gebietskörperschaft bereitgestellten Mitteln an Fachkräfte oder freiwillige Helfer gezahlt werden, die in den anderen Vertragsstaat mit dessen Zustimmung entsandt wurden.

c) Die Absätze 1 und 2 gelten auch für Gehälter, Löhne und ähnliche Vergütungen sowie Ruhegehälter,

(i) die aus Haushaltsmitteln des deutschen Staates an natürliche Personen für dem Goethe-Institut geleistete Dienste gezahlt werden;

(ii) die aus Haushaltsmitteln des chinesischen Staates an natürliche Personen für dem chinesischen Kulturzentrum geleistete Dienste gezahlt werden;

(iii) die an sonstige vergleichbare Institutionen gezahlt werden, auf die sich die Vertragsstaaten einvernehmlich verständigen.

6. Zu Artikel 26:

Werden nach diesem Abkommen in Übereinstimmung mit dem innerstaatlichen Recht personenbezogene Daten übermittelt, gelten unter Beachtung der für jeden Vertragsstaat geltenden Rechtsvorschriften ergänzend die nachfolgenden Bestimmungen:

a) „Personenbezogene Daten" bedeutet alle Informationen betreffend eine identifizierte oder identifizierbare natürliche Person; als identifizierbar gilt eine Person, die anhand der von der ersuchenden Stelle übermittelten Informationen identifiziert werden kann.

b) Die Verwendung der Daten durch die empfangende Stelle ist nur zu den in Artikel 26 genannten Zwecken und unter den durch die übermittelnde Stelle vorgeschriebenen Bedingungen zulässig. Nach diesem Abkommen übermittelte Daten und Informationen dürfen ohne vorherige Zustimmung des übermittelnden Vertragsstaats nicht in Strafsachen verwendet werden; die Zustimmung wird in Übereinstimmung mit dem innerstaatlichen Recht und gegebenenfalls anwendbaren zwei- oder mehrseitigen Übereinkünften über die Rechtshilfe in Strafsachen erteilt.

c) Die empfangende Stelle unterrichtet die übermittelnde Stelle auf Ersuchen über die Verwendung der übermittelten Daten und die dadurch erzielten Ergebnisse.

d) Jede weitere Übermittlung an andere Stellen, die nicht in Artikel 26 Absatz 2 genannt sind, darf nur mit vorheriger Zustimmung der übermittelnden Stelle erfolgen.

e) Die übermittelnde Stelle bemüht sich nach besten Kräften, die Richtigkeit der zu

übermittelnden Daten sowie ihre Erforderlichkeit und Angemessenheit in Bezug auf den mit der Übermittlung verfolgten Zweck zu gewährleisten. Dabei sind die nach geltendem innerstaatlichen Recht für die Datenübermittlung bestehenden Beschränkungen zu beachten. Erweist sich, dass unrichtige Daten oder Daten, die nicht hätten übermittelt werden dürfen, übermittelt wurden, ist dies der empfangenden Stelle unverzüglich mitzuteilen. Diese ist dann verpflichtet, die betreffenden Daten unverzüglich zu berichtigen oder zu löschen.

f) Der Betroffene ist auf Antrag über die zu seiner Person übermittelten Daten sowie über den vorgesehenen Verwendungszweck zu unterrichten. Eine Verpflichtung zur Auskunftserteilung besteht nicht, sofern eine Abwägung ergibt, dass das öffentliche Interesse, die Auskunft nicht zu erteilen, das Interesse des Betroffenen an der Auskunftserteilung überwiegt. Im Übrigen richtet sich das Recht des Betroffenen, über die zu seiner Person vorhandenen Daten unterrichtet zu werden, nach dem innerstaatlichen Recht des Vertragsstaats, in dessen Hoheitsgebiet die Unterrichtung beantragt wird.

g) Enthält das für die übermittelnde Stelle geltende innerstaatliche Recht besondere Löschungsvorschriften in Bezug auf die übermittelten personenbezogenen Daten, weist sie die empfangende Stelle darauf hin. Unabhängig von diesem Recht sind die übermittelten personenbezogenen Daten zu löschen, sobald sie für den Zweck, für den sie übermittelt wurden, nicht mehr erforderlich sind.

h) Die übermittelnde und die empfangende Stelle sind verpflichtet, die Übermittlung und den Empfang personenbezogener Daten aktenkundig zu machen.

i) Die übermittelnde und die empfangende Stelle sind verpflichtet, die übermittelten personenbezogenen Daten vor unbefugtem Zugang, unbefugter Änderung und unbefugter Bekanntgabe wirksam zu schützen.

Zu Urkund dessen haben die hierzu gehörig befugten Unterzeichneten dieses Protokoll unterzeichnet.

Geschehen zu Berlin am 28. März 2014 in zwei Urschriften, jede in deutscher, chinesischer und englischer Sprache, wobei jeder Wortlaut verbindlich ist. Bei unterschiedlicher Auslegung des deutschen und des chinesischen Wortlauts ist der englische Wortlaut maßgebend.

Für die
Bundesrepublik Deutschland

Für die
Volksrepublik China

[TRANSLATION – TRADUCTION]

ACCORD ENTRE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE ET LA RÉPUBLIQUE POPULAIRE DE CHINE TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE

La République fédérale d'Allemagne et la République populaire de Chine,

Désireuses de conclure un Accord tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune,

Sont convenues de ce qui suit :

Article premier. Personnes visées

Le présent Accord s'applique aux personnes qui sont des résidents d'un État contractant ou des deux États contractants.

Article 2. Impôts visés

1. Le présent Accord s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte d'un État contractant ou de ses collectivités locales, quel que soit le système de perception.

2. Sont considérés comme impôts sur le revenu et sur la fortune les impôts perçus sur le revenu total, sur la fortune totale, ou sur des éléments du revenu ou de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant global des salaires payés par les entreprises, ainsi que les impôts sur les plus-values.

3. Les impôts actuels auxquels s'applique le présent Accord sont notamment :

a) En Chine :

i) L'impôt sur le revenu des personnes physiques ;

ii) L'impôt sur le revenu des personnes morales ;

(ci-après dénommés « impôt chinois ») ;

b) En République fédérale d'Allemagne :

i) L'impôt sur le revenu (Einkommensteuer) ;

ii) L'impôt sur les sociétés (Körperschaftsteuer) ;

iii) La taxe professionnelle (Gewerbesteuer) ; et

iv) L'impôt sur la fortune (Vermögensteuer) ; y compris les suppléments qui y sont prélevés ;

(ci-après dénommés « impôt allemand ») ;

4. L'Accord s'applique également à tous impôts de nature identique ou sensiblement similaire qui seraient établis après la date de signature de l'Accord et qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des États contractants se communiquent les modifications significatives apportées à leurs législations fiscales.

Article 3. Définitions générales

1. Aux fins du présent Accord, à moins que le contexte n'exige une interprétation différente :

a) Le terme « Chine » désigne la République populaire de Chine, et lorsqu'il est employé dans un sens géographique, ce terme désigne tout le territoire de la République populaire de Chine, y compris ses eaux territoriales, dans la mesure où la législation fiscale s'y applique, ainsi que toute zone au-delà des eaux territoriales, dans la mesure où la République populaire de Chine a des droits souverains d'exploration et d'exploitation des ressources des fonds marins, de leur sous-sol et des eaux surjacentes, ainsi que leurs ressources naturelles, conformément au droit international ;

b) Le terme « Allemagne » désigne la République fédérale d'Allemagne et, lorsqu'il est utilisé dans une acception géographique, il désigne le territoire de la République fédérale d'Allemagne, y compris la zone des fonds marins, de leur sous-sol et les eaux surjacentes adjacente à la mer territoriale, dans la mesure où la République fédérale d'Allemagne peut exercer ses droits souverains et sa juridiction conformément au droit international et à sa législation nationale aux fins d'exploration, d'exploitation, de conservation et de gestion des ressources naturelles biologiques et non biologiques ;

c) L'expression « un État contractant » et « l'autre État contractant » s'entendent, selon le contexte, de la République fédérale d'Allemagne ou de la Chine ;

d) Le terme « personne » comprend les personnes physiques, les sociétés et tous autres groupements de personnes ;

e) Le terme « société » désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition ;

f) Les expressions « entreprise d'un État contractant » et « entreprise de l'autre État contractant » désignent respectivement une entreprise exploitée par un résident d'un État contractant et une entreprise exploitée par un résident de l'autre État contractant ;

g) L'expression « trafic international » désigne tout transport effectué par un navire ou un aéronef exploité par une entreprise dont le siège de direction effective est situé dans un État contractant, sauf lorsque le navire ou l'aéronef n'est exploité qu'entre des points situés dans l'autre État contractant ;

h) L'expression « ressortissant » désigne :

i) En ce qui concerne la République fédérale d'Allemagne, tout Allemand au sens de la Loi fondamentale de la République fédérale d'Allemagne, ainsi que toute personne morale, société de personnes et association constituée conformément à la législation en vigueur en République fédérale d'Allemagne ;

ii) En ce qui concerne la Chine, toute personne physique qui possède la nationalité de la République populaire de Chine, ainsi que toute personne morale, société de personnes et association constituée conformément à la législation en vigueur en République populaire de Chine ;

i) L'expression « autorité compétente » désigne :

i) Dans le cas de la Chine, l'Administration fiscale nationale ou son représentant dûment habilité ;

ii) Dans le cas de la République fédérale d'Allemagne, le Ministère fédéral des finances ou l'organisme à qui il a délégué ses pouvoirs.

2. Aux fins de l'application de l'Accord par un État contractant à un moment quelconque, tout terme ou expression qui n'y est pas défini a, sauf si le contexte exige une interprétation différente, le sens qui lui est attribué à ce moment par la législation de cet État qui régit les impôts auxquels s'applique l'Accord, le sens qui lui est attribué par le droit fiscal en vigueur de cet État prévalant sur le sens attribué à ce terme par d'autres branches du droit de cet État.

Article 4. Résident

1. Aux fins du présent Accord, l'expression « résident d'un État contractant » désigne toute personne qui, en vertu de la législation de cet État, est assujettie à l'impôt dans cet État en raison de son domicile, de sa résidence, de son lieu de constitution, de son siège de direction effectif ou de tout autre critère de nature analogue, et elle s'applique également à cet État ou à ses collectivités locales. Toutefois, cette expression ne comprend pas les personnes qui ne sont assujetties à l'impôt dans cet État que pour les revenus de sources situées dans cet État ou pour la fortune qui y est située.

2. Lorsque, selon les dispositions du paragraphe 1, une personne physique est un résident des deux États contractants, sa situation est réglée de la manière suivante :

a) Cette personne est considérée comme un résident seulement de l'État où elle dispose d'un foyer d'habitation permanent ; si elle dispose d'un foyer d'habitation permanent dans les deux États, elle est considérée comme un résident seulement de l'État avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux) ;

b) Si l'État où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou si elle ne dispose d'un foyer d'habitation permanent dans aucun des États, elle est considérée comme un résident seulement de l'État où elle séjourne de façon habituelle ;

c) Si cette personne séjourne de façon habituelle dans les deux États ou si elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme un résident seulement de l'État dont elle possède la nationalité ;

d) Si cette personne possède la nationalité des deux États ou si elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des États contractants tranchent la question d'un commun accord.

3. Lorsque, selon les dispositions du paragraphe 1, une personne autre qu'une personne physique est un résident des deux États contractants, elle est considérée comme un résident seulement de l'État où son siège de direction effective est situé.

Article 5. Établissement stable

1. Aux fins du présent Accord, L'expression « établissement permanent » désigne une installation fixe d'affaires par l'intermédiaire de laquelle une entreprise exerce tout ou partie de son activité.

2. L'expression « établissement stable » comprend notamment :

a) Un siège de direction ;

b) Une succursale ;

c) Un bureau ;

d) Une usine ;

e) Un atelier ; et

f) Une mine, un puits de pétrole ou de gaz, une carrière ou tout autre lieu d'extraction de ressources naturelles.

3. L'expression « établissement stable » comprend également :

a) Un chantier de construction, un projet de montage ou d'installation ou des activités de supervision liées à ce projet, mais seulement si ce chantier de construction, ce projet ou ces activités durent plus de 12 mois ;

b) La fourniture, par une entreprise, de services, y compris des services de conseil, par l'intermédiaire d'employés ou autre personnel engagés à cette fin, mais seulement lorsque des activités de cette nature se poursuivent (pour le même projet ou pour un projet connexe), sur le territoire d'un État contractant, pendant une ou des périodes représentant un total de plus de 183 jours au cours de toute période de 12 mois.

4. Nonobstant les dispositions précédentes du présent article, il est considéré que l'expression « établissement stable » ne comprend pas :

a) L'utilisation d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise ;

b) L'exploitation d'un stock de biens et de marchandises appartenant à l'entreprise aux seules fins de stockage, d'exposition ou de livraison ;

c) L'exploitation d'un stock de biens et de marchandises appartenant à l'entreprise aux seules fins de transformation par une autre entreprise.

d) L'exploitation d'une installation fixe d'affaires aux seules fins d'acheter des marchandises ou de réunir des informations, pour l'entreprise ;

e) L'exploitation d'une installation fixe d'affaires aux seules fins d'exercer, pour l'entreprise, toute autre activité de caractère préparatoire ou auxiliaire ;

f) L'exploitation d'une installation fixe d'affaires aux seules fins de l'exercice cumulé d'activités mentionnées aux alinéas a) à e), à condition que l'activité d'ensemble de l'installation fixe d'affaires résultant de ce cumul garde un caractère préparatoire ou auxiliaire.

5. Nonobstant les dispositions des paragraphes 1 et 2, lorsqu'une personne, autre qu'un agent jouissant d'un statut indépendant auquel s'applique le paragraphe 6, agit dans un État contractant pour le compte d'une entreprise de l'autre État contractant et dispose dans cet État contractant de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, cette entreprise est considérée comme ayant un établissement stable dans cet

État contractant pour toutes les activités que cette personne exerce pour l'entreprise, à moins que les activités de cette personne ne soient limitées à celles qui sont mentionnées au paragraphe 4 et qui, si elles étaient exercées par l'intermédiaire d'une installation fixe d'affaires, ne permettraient pas de considérer cette installation comme un établissement stable selon les dispositions de ce paragraphe.

6. Une entreprise d'un État contractant n'est pas considérée comme ayant un établissement stable dans l'autre État contractant du seul fait qu'elle y exerce une activité par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre agent jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leurs activités. Toutefois, lorsqu'il agit totalement ou presque totalement pour le compte de cette entreprise, et qu'entre cette entreprise et l'agent sont établies ou imposées, dans leurs relations commerciales et financières, des conditions qui diffèrent de celles qui auraient été établies entre des entreprises indépendantes, cet agent n'est pas considéré comme un agent jouissant du d'un statut indépendant au sens du présent paragraphe.

7. Le fait qu'une société qui est un résident d'un État contractant contrôle ou est contrôlée par une société qui est un résident de l'autre État contractant ou qui y exerce son activité (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces sociétés un établissement stable de l'autre.

Article 6. Revenus immobiliers

1. Les revenus qu'un résident d'un État contractant tire de biens immobiliers (y compris les revenus des exploitations agricoles ou forestières) situés dans l'autre État contractant sont imposables dans cet autre État.

2. L'expression « biens immobiliers » a le sens que lui attribue le droit de l'État contractant où les biens considérés sont situés. L'expression comprend en tous cas les accessoires, le cheptel et l'équipement des exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des paiements variables ou fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres ressources naturelles ; les navires et aéronefs ne sont pas considérés comme des biens immobiliers.

3. Les dispositions du paragraphe 1 s'appliquent aux revenus provenant de l'exploitation directe, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation des biens immobiliers.

4. Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus provenant des biens immobiliers servant à l'exercice d'une profession indépendante.

Article 7. Bénéfices des entreprises

1. Les bénéfices d'une entreprise d'un État contractant ne sont imposables que dans cet État, à moins que l'entreprise n'exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre État mais uniquement dans la mesure où ils sont imputables audit établissement stable.

2. Sous réserve des dispositions du paragraphe 3, lorsqu'une entreprise d'un État contractant exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque État contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Pour déterminer les bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'État où est situé cet établissement stable, soit ailleurs.

4. S'il est d'usage, dans un État contractant, de déterminer les bénéfices imputables à un établissement stable sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses composantes, aucune disposition du paragraphe 2 n'empêche cet État contractant de déterminer les bénéfices imposables selon la répartition en usage ; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

5. Aucun bénéfice n'est imputé à un établissement stable du fait qu'il a simplement acheté des marchandises pour l'entreprise.

6. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont déterminés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

7. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles du présent Accord, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8. Transports maritime et aérien

1. Les bénéfices provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'État contractant où le siège de direction effective de l'entreprise est situé.

2. Aux fins du présent article, les bénéfices tirés de l'exploitation de navires ou d'aéronefs en trafic international comprennent :

a) Les bénéfices tirés de l'affrètement coque nue de navires ou d'aéronefs ; et

b) Les bénéfices provenant de l'utilisation, de l'entretien ou de la location de conteneurs (y compris les remorques et le matériel connexe servant au transport des conteneurs) utilisés pour le transport de marchandises ;

lorsque cet usage, cet entretien ou cette location, selon le cas, est auxiliaire à l'exploitation de navires ou d'aéronefs en trafic international.

3. Si le siège de direction effective d'une entreprise de transport maritime est à bord d'un navire, il est considéré comme situé dans l'État contractant où se trouve le port d'attache de ce navire ou, à défaut de port d'attache, dans l'État contractant dont l'exploitant du navire est un résident.

4. Les dispositions du paragraphe 1 s'appliquent aussi aux bénéfices provenant de la participation à un consortium, une coentreprise ou un organisme international d'exploitation.

Article 9. Entreprises associées

1. Lorsque :
   a) Une entreprise d'un État contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre État contractant ; ou que
   b) Les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un État contractant et d'une entreprise de l'autre État contractant ;

et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions convenues ou imposées, qui diffèrent de celles qui seraient convenues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été réalisés par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

2. Lorsqu'un État contractant inclut dans les bénéfices d'une entreprise de cet État, et impose en conséquence des bénéfices sur lesquels une entreprise de l'autre État contractant a été imposée dans cet autre État, et que les bénéfices ainsi inclus sont des bénéfices qui auraient été réalisés par l'entreprise du premier État si les conditions convenues entre les deux entreprises avaient été celles qui auraient été convenues entre des entreprises indépendantes, alors cet autre État procède à un ajustement approprié du montant de l'impôt qui y a été perçu sur ces bénéfices. Il est tenu compte à cette fin des autres dispositions du présent Accord et les autorités compétentes des États contractants se consultent au besoin.

Article 10. Dividendes

1. Les dividendes payés par une société qui est un résident d'un État contractant à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces dividendes sont aussi imposables dans l'État contractant dont la société qui paie les dividendes est un résident et selon la législation de cet État, mais si le bénéficiaire effectif des dividendes est un résident de l'autre État contractant, l'impôt ainsi établi ne peut excéder :
   a) 5 % du montant brut des dividendes si le bénéficiaire effectif est une société (autre qu'une société de personnes) qui détient directement au moins 25 % du capital de la société qui paie les dividendes ;
   b) 15 % du montant brut des dividendes lorsque ces dividendes sont payés sur des revenus ou gains tirés directement ou indirectement de biens immobiliers au sens de l'article 6 par une entité intermédiaire qui distribue annuellement la majeure partie de ces revenus ou gains et dont les revenus ou gains tirés de ces biens immobiliers sont exonérés d'impôt ;
   c) 10 % du montant brut des dividendes, dans tous les autres cas.

Le présent paragraphe n'affecte pas l'imposition de la société au titre des bénéfices qui servent au versement des dividendes.

3. Le terme « dividendes » employé dans le présent article désigne les revenus provenant d'actions ou d'autres parts bénéficiaires, à l'exception des créances, ou les autres revenus soumis

au même régime fiscal que les revenus d'actions par la législation de l'État dont la société distributrice est un résident.

4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident d'un État contractant, exerce dans l'autre État contractant dont la société qui verse les dividendes est un résident, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que la participation génératrice des dividendes s'y rattache effectivement. Dans cette éventualité, les dispositions de l'article 7 ou de l'article 14, selon le cas, s'appliquent.

5. Lorsqu'une société qui est un résident d'un État contractant tire des bénéfices ou des revenus de l'autre État contractant, cet autre État ne peut percevoir aucun impôt sur les dividendes payés par la société, sauf dans la mesure où ces dividendes sont payés à un résident de cet autre État ou dans la mesure où la participation génératrice des dividendes se rattache effectivement à un établissement stable situé dans cet autre État, ni prélever aucun impôt, au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes payés ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre État.

Article 11. Intérêts

1. Les intérêts provenant d'un État contractant et payés à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces intérêts sont aussi imposables dans l'État contractant d'où ils proviennent et selon la législation de cet État, mais si le bénéficiaire effectif des intérêts est un résident de l'autre État contractant, l'impôt ainsi établi ne peut excéder 10 % du montant brut des intérêts.

3. Nonobstant les dispositions du paragraphe 2 :

a) Les intérêts provenant d'un État contractant et versés au Gouvernement de l'autre État contractant sont exonérés de l'impôt dans le premier État ;

b) Les intérêts provenant d'un État contractant et versés au titre d'un prêt garanti ou assuré par l'autre État contractant ou par toute institution financière entièrement détenue par cet État sont exonérés de l'impôt dans le premier État ;

c) Les intérêts provenant de Chine et payés à la Banque fédérale allemande (Deutsche Bundesbank), à la Société de crédit pour le développement (Kreditanstalt für Wiederaufbau) ou à la Société allemande d'investissement et de développement (DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH), et à tout établissement public de crédit de la République fédérale d'Allemagne, si les autorités compétentes des deux États en sont convenues, sont exonérés de l'impôt chinois ;

d) Les intérêts provenant de la République fédérale d'Allemagne et versés à :

i) La Banque populaire de Chine ;

ii) La Société de crédit chinoise pour le développement ;

iii) La Banque de développement agricole de Chine ;

iv) La Banque export-import de Chine ;

v) Le Conseil national de la caisse de sécurité sociale ;

vi) La Société chinoise d'investissement ; et

vii) Tout autre établissement public de crédit du Gouvernement de la Chine, si les autorités compétentes des deux États en sont convenues ;

sont exonérés de l'impôt allemand.

4. Nonobstant les dispositions du paragraphe 2, les intérêts visés au paragraphe 1 sont imposables uniquement dans l'État contractant dont le bénéficiaire est un résident, si celui-ci est le bénéficiaire effectif des intérêts et si les intérêts sont versés en relation avec la vente de matériels commerciaux ou scientifiques à crédit.

5. Le terme « intérêts » employé dans le présent article désigne les revenus des créances de toute nature, assorties ou non de garanties hypothécaires et notamment les revenus des fonds publics et des obligations d'emprunts, y compris les primes et lots attachés à ces titres. Les pénalités pour retard de paiement ne sont pas considérées comme des intérêts au sens du présent article.

6. Les dispositions des paragraphes 1 à 4 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un État contractant, exerce dans l'autre État contractant, d'où proviennent les intérêts, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que la créance génératrice des intérêts s'y rattache effectivement. Dans cette éventualité, les dispositions de l'article 7 ou de l'article 14, selon le cas, s'appliquent.

7. Les intérêts sont considérés comme provenant d'un État contractant lorsque le débiteur est un résident de cet État. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un État contractant, a dans un État contractant un établissement stable ou une base fixe pour lesquels la dette donnant lieu au paiement des intérêts a été contractée et qui supportent la charge de ces intérêts, ceux-ci sont considérés comme provenant de l'État où l'établissement stable, ou la base fixe, est situé.

8. Lorsque, en raison de relations spéciales entre le débiteur et le bénéficiaire effectif ou entre l'un et l'autre et quelque autre personne, le montant des intérêts, compte tenu de la créance pour laquelle ils sont payés, excède celui dont seraient convenus le débiteur et le bénéficiaire effectif en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. Dans ce cas, la partie excédentaire des paiements reste imposable selon la législation de chaque État contractant, compte tenu des autres dispositions du présent Accord.

Article 12. Redevances

1. Les redevances provenant d'un État contractant et dont le bénéficiaire effectif est un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces redevances sont également imposables dans l'État contractant de la source et selon la législation de cet État ; mais si le bénéficiaire effectif est un résident de l'autre État contractant, l'impôt ainsi établi ne peut excéder :

a) Dans le cas des redevances mentionnées à l'alinéa a) du paragraphe 3, 10 % du montant brut des redevances ; et

b) Dans le cas des redevances mentionnées à l'alinéa b) du paragraphe 3, 10 % du montant ajusté des redevances. Aux fins du présent alinéa, le terme « montant ajusté » désigne 60 % du montant brut de ces redevances.

3. Le terme « redevances » employé dans le présent article désigne :

a) Les rémunérations de toute nature versées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, y compris les films cinématographiques ainsi que les films et bandes pour la diffusion radiophonique ou télévisuelle, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets ou pour des informations (savoir-faire) ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique ; et

b) Les rémunérations de toute nature payées pour l'usage, ou la concession de l'usage de tout équipement industriel, commercial ou scientifique.

4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un État contractant, exerce dans l'autre État contractant source des redevances soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que le droit ou le bien générateur des redevances s'y rattache effectivement. Dans cette éventualité, les dispositions de l'article 7 ou de l'article 14, selon le cas, s'appliquent.

5. Les redevances sont considérées comme provenant d'un État contractant lorsque le débiteur est un résident de cet État. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un État contractant, a dans un État contractant un établissement stable ou une base fixe pour lesquels l'engagement donnant lieu aux redevances a été contracté et qui supportent la charge de ces redevances, celles-ci sont considérées comme provenant de l'État où l'établissement stable ou la base fixe sont situés.

6. Lorsque, en raison des relations spéciales qui existent entre le débiteur et le bénéficiaire effectif ou que l'un et l'autre entretiennent avec de tierces personnes, le montant des redevances, compte tenu de la prestation pour laquelle elles sont payées, excède celui dont seraient convenus le débiteur et le bénéficiaire effectif sans ces relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. Dans ce cas, la partie excédentaire des paiements reste imposable selon la législation de chaque État contractant, compte tenu des autres dispositions du présent Accord.

Article 13. Gains en capital

1. Les gains qu'un résident d'un État contractant tire de l'aliénation de biens immobiliers visés à l'article 6, et situés dans l'autre État contractant, sont imposables dans cet autre État.

2. Les gains issus de l'aliénation de biens meubles qui font partie de l'actif d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant, ou de biens meubles qui appartiennent à une base fixe dont un résident d'un État contractant dispose dans l'autre État contractant pour l'exercice d'une profession indépendante, y compris de tels gains dégagés par l'aliénation de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre État.

3. Les gains issus de l'aliénation de navires ou d'aéronefs exploités en trafic international ou de biens meubles affectés à l'exploitation de ces navires ou aéronefs ne sont imposables que dans l'État contractant où le siège de direction effective de l'entreprise est situé.

4. Les gains qu'un résident d'un État contractant tire de l'aliénation d'actions qui tirent directement ou indirectement plus de 50 % de leur valeur de biens immobiliers situés dans l'autre État contractant sont imposables dans cet autre État.

5. Les gains qu'un résident d'un État contractant tire de l'aliénation d'actions, autres que celles qui font l'objet d'échanges importants et réguliers sur une place boursière reconnue, à condition que le total des actions aliénées par le résident au cours de l'exercice fiscal au cours duquel l'aliénation a lieu n'excède pas 3 % des actions cotées, d'une société qui est un résident de l'autre État contractant, sont imposables dans cet autre État contractant si le premier résident, à tout moment au cours de la période de 12 mois précédant l'aliénation, a possédé, directement ou indirectement, au moins 25 % des actions de cette société.

6. Les gains tirés de l'aliénation de tous biens autres que ceux visés aux paragraphes 1 à 5 ne sont imposables que dans l'État contractant dont le cédant est un résident.

Article 14. Professions indépendantes

1. Les revenus qu'un résident d'un État contractant tire d'une profession libérale ou d'autres activités de caractère indépendant ne sont imposables que dans cet État ; toutefois, ces revenus sont également imposables dans l'autre État contractant dans les cas suivants :

a) Ce résident dispose de façon habituelle, dans l'autre État contractant, d'une base fixe pour l'exercice de ses activités ; en ce cas, seule la fraction des revenus qui est imputable à ladite base fixe est imposable dans l'autre État contractant ;

b) Si son séjour dans l'autre État contractant s'étend sur une période ou des périodes d'une durée totale égale ou supérieure à 183 jours au cours de toute période de 12 mois commençant ou s'achevant pendant l'exercice considéré ; en ce cas, seule la fraction des revenus qui est tirée des activités exercées dans cet autre État est imposable dans cet autre État.

2. L'expression « profession indépendante » se rapporte notamment aux activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi qu'aux activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

Article 15. Revenus d'emploi

1. Sous réserve des dispositions des articles 16, 18, et 19, les salaires, traitements et autres rémunérations similaires qu'un résident d'un État contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet État, à moins que l'emploi soit exercé dans l'autre État contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre État.

2. Nonobstant les dispositions du paragraphe 1, les rémunérations qu'un résident d'un État contractant reçoit au titre d'un emploi salarié exercé dans l'autre État contractant ne sont imposables que dans le premier État si :

a) Le bénéficiaire séjourne dans l'autre État pendant une période ou des périodes n'excédant pas au total 183 jours au cours de toute période de 12 mois commençant ou se terminant durant l'année fiscale considérée ; et

b) Les rémunérations sont payées par un employeur, ou pour le compte d'un employeur, qui n'est pas un résident de l'autre État ; et

c) La charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre État.

3. Nonobstant les dispositions précédentes du présent article, les rémunérations reçues au titre d'un emploi exercé à bord d'un navire ou d'un aéronef exploité en trafic international sont imposables dans l'État contractant où le siège de direction effective de l'entreprise est situé.

Article 16. Tantièmes

Les tantièmes, jetons de présence et autres rétributions analogues qu'un résident d'un État contractant reçoit en sa qualité de membre du conseil d'administration d'une société qui est un résident de l'autre État contractant sont imposables dans cet autre État.

Article 17. Artistes et sportifs

1. Nonobstant les dispositions des articles 7, 14 et 15, les revenus qu'un résident d'un État contractant tire de ses activités personnelles exercées dans l'autre État contractant en tant qu'artiste du spectacle, artiste de théâtre, du cinéma, de la radio ou de la télévision, ou musicien ou en tant que sportif, sont imposables dans cet autre État.

2. Lorsque les revenus d'activités qu'un artiste du spectacle ou qu'un sportif exerce personnellement et en cette qualité sont attribués non pas à l'artiste du spectacle ou au sportif lui-même, mais à une autre personne, ces revenus sont imposables, nonobstant les dispositions des articles 7, 14 et 15, dans l'État contractant où s'exercent les activités de l'artiste du spectacle ou du sportif.

3. Nonobstant les dispositions des paragraphes 1 et 2, les revenus tirés par un artiste du spectacle ou un sportif qui est un résident d'un État contractant d'activités exercées dans l'autre État contractant dans le cadre d'un programme d'échange culturel approuvé par les Gouvernements des deux États contractants ne sont pas imposables dans cet autre État contractant.

Article 18. Pensions

1. Sous réserve des dispositions du paragraphe 2 de l'article 19, les pensions et autres rémunérations ou rentes similaires payées à un résident d'un État contractant à partir de l'autre État contractant, ne sont imposables que dans le premier État.

2. Nonobstant les dispositions du paragraphe 1, les pensions payées et autres versements effectués au titre d'une caisse publique qui fait partie du régime de sécurité sociale d'un État contractant ou de l'une de ses collectivités locales ne sont imposables que dans cet État.

Article 19. Fonction publique

1. a) Les salaires, traitements et rémunérations similaires, autres que les pensions et payées par un État contractant ou l'une de ses collectivités locales à une personne physique, au titre de services fournis à cet État ou à cette collectivité locale ne sont imposables que dans cet État ;

b) Toutefois, ces salaires, traitements et autres rémunérations similaires ne sont imposables que dans l'autre État contractant si les services sont fournis dans cet État et si la personne physique est un résident de cet État qui :

i) Possède la nationalité de cet État ; ou

ii) N'est pas devenu un résident de cet État à seule fin de rendre les services.

2. a) Nonobstant les dispositions du paragraphe 1, les pensions et autres rémunérations similaires payées par un État contractant ou une de ses collectivités locales, soit directement soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique pour services fournis à cet État ou cette collectivité locale ne sont imposables que dans cet État contractant ;

b) Toutefois, ces pensions et autres rémunérations similaires ne sont imposables que dans l'autre État contractant si la personne physique est un résident de cet État et en possède la nationalité.

3. Les dispositions des articles 15, 16, 17 et 18 s'appliquent aux salaires, traitements, pensions et aux autres rémunérations similaires au titre de services fournis dans le cadre d'une activité industrielle ou commerciale exercée par un État contractant ou l'une de ses collectivités locales.

Article 20. Enseignants invités et étudiants

1. Une personne physique qui séjourne dans un État contractant à l'invitation de cet État ou d'une université, d'une école, d'un musée ou d'une autre institution culturelle de cet État ou dans le cadre d'un programme d'échange culturel officiel pendant une période ne dépassant pas deux ans, aux seules fins d'y enseigner, d'y donner des conférences ou d'y effectuer des travaux de recherche dans une telle institution et qui est ou était immédiatement avant de se rendre dans cet État, un résident de l'autre État contractant, est exonérée d'impôts dans le premier État sur la rémunération qu'elle reçoit au titre des activités en question, à condition que cette rémunération provienne de sources situées en dehors de cet État. Si la période est supérieure à deux ans, la rémunération reçue au titre de ces activités est imposable dans le premier État dès le début du séjour.

2. Les dispositions du paragraphe 1 ne s'appliquent pas aux revenus tirés de travaux de recherche si ces travaux sont menés non pas dans l'intérêt public, mais essentiellement dans l'intérêt privé d'une ou de plusieurs personnes déterminées.

3. Les sommes qu'un étudiant ou un stagiaire, qui est ou qui était immédiatement avant de se rendre dans un État contractant un résident de l'autre État contractant et qui séjourne dans le premier État à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet État, à condition qu'elles proviennent de sources situées en dehors de cet État.

Article 21. Autres revenus

1. Les éléments du revenu d'un résident d'un État contractant, d'où qu'ils proviennent, qui ne sont pas traités dans les articles précédents du présent Accord ne sont imposables que dans cet État.

2. Les dispositions du paragraphe 1 ne s'appliquent pas aux revenus autres que les revenus provenant de biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, lorsque le bénéficiaire de tels revenus, résident d'un État contractant, exerce dans l'autre État contractant soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que le droit ou le bien générateur des revenus s'y rattache effectivement Dans ce cas, les dispositions de l'article 7 ou de l'article 14, selon le cas, s'appliquent.

Article 22. Fortune

1. La fortune constituée par des biens immobiliers visés à l'article 6, que possède un résident d'un État contractant et qui sont situés dans l'autre État contractant, est imposable dans cet autre État.

2. La fortune constituée par des biens mobiliers qui font partie de l'actif d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant est imposable dans cet autre État.

3. La fortune constituée par des navires ou des aéronefs exploités en trafic international ainsi que par des biens mobiliers affectés à l'exploitation de ces navires et aéronefs n'est imposable que dans l'État contractant où est situé le siège de direction effective de l'entreprise.

4. Tous les autres éléments de la fortune d'un résident d'un État contractant ne sont imposables que dans cet État.

Article 23. Méthodes pour éliminer les doubles impositions

1. En Chine, sous réserve des dispositions de la législation de la Chine, les doubles impositions sont éliminées comme suit :

a) Lorsqu'un résident de la Chine reçoit des revenus en provenance de la République fédérale d'Allemagne, le montant de l'impôt exigible en République fédérale d'Allemagne en vertu des dispositions du présent Accord est admis comme crédit sur l'impôt chinois exigible de ce résident. Le montant de ce crédit d'impôt ne peut cependant excéder le montant de l'impôt chinois sur ces revenus, calculé selon la législation et les règlements fiscaux chinois ;

b) Lorsque les revenus provenant de la République fédérale d'Allemagne sont des dividendes payés par une société qui est un résident de la République fédérale d'Allemagne à une société qui est un résident de la Chine et qui détient au moins 20 % des actions de la société qui paie le dividende, le crédit d'impôt tient compte de l'impôt versé à la République fédérale d'Allemagne par la société qui paie le dividende au titre de ses revenus.

2. En République fédérale d'Allemagne, conformément aux dispositions de la législation de la République fédérale d'Allemagne, les doubles impositions sont éliminées comme suit :

a) À moins que la déduction de l'impôt étranger ne soit admise conformément à l'alinéa b), tout élément du revenu provenant de sources situées en Chine et tout élément de fortune situé en Chine qui, en vertu du présent Accord, est imposable en Chine, est exclu de l'assiette de l'impôt allemand ;

Pour ce qui est des éléments de revenus provenant de dividendes, les dispositions qui précèdent ne s'appliquent qu'aux dividendes payés à une société (mais non une association de personnes) qui est un résident de la République fédérale d'Allemagne par une société qui est un résident de Chine et dont au moins 25 % du capital est détenu directement par la société allemande, qui n'ont pas été déduits lors du calcul des bénéfices de la société qui les distribue.

Sont exclus de l'assiette de l'impôt sur la fortune les participations dont les dividendes, s'ils étaient payés, seraient exonérés de cet impôt, en application des dispositions des phrases qui précèdent ;

b) Sous réserve des dispositions de la législation fiscale allemande en matière de crédit d'impôt étranger, il est admis en déduction de l'impôt allemand sur le revenu au titre des éléments suivants du revenu, l'impôt chinois payé en vertu de la législation chinoise et conformément au présent Accord :

   i) Les dividendes qui ne sont pas visés par l'alinéa a) ;

   ii) Les intérêts ;

   iii) Les redevances ;

   iv) Les éléments de revenu qui sont imposables en Chine, conformément aux paragraphes 4 et 5 de l'article 13 ;

   v) Les tantièmes ;

   vi) Les éléments de revenu qui sont imposables conformément à l'article 17 ;

c) Les dispositions de l'alinéa b) s'appliquent à la place de celles de l'alinéa a) aux éléments de revenu définis aux articles 7 et 10 et aux actifs dont proviennent lesdits revenus si le résident de la République fédérale d'Allemagne ne prouve pas que les revenus bruts obtenus par l'établissement stable au cours de l'exercice pendant lequel le bénéfice a été réalisé ou par la société résidente de Chine au cours de l'exercice pour lequel les dividendes ont été payés provenaient exclusivement ou presque exclusivement d'activités au sens des alinéas 1 à 6 du paragraphe 1 de l'article 8 de la loi allemande sur les relations fiscales extérieures (Aussensteuergesetz) ; il en va de même en ce qui concerne les biens immobiliers utilisés par un établissement stable et les revenus tirés des biens immobiliers de l'établissement stable (paragraphe 4 de l'article 6) ainsi que des bénéfices provenant de l'aliénation de ces biens immobiliers (paragraphe 1 de l'article 13) et des biens mobiliers faisant partie de l'actif de l'établissement stable (paragraphe 2 de l'article 13) ;

d) Toutefois, la République fédérale d'Allemagne se réserve le droit de tenir compte, dans le calcul de son taux d'imposition, des éléments de revenu et de fortune qui sont exonérés de l'impôt allemand en vertu des dispositions du présent Accord ;

e) Nonobstant les dispositions de l'alinéa a), les doubles impositions sont éliminées en accordant un crédit d'impôt comme en dispose l'alinéa b) :

   i) Lorsque des éléments de revenu ou de la fortune relèvent, dans les États contractants, de dispositions différentes du présent Accord ou sont imputés à des personnes différentes (sauf en application de l'article 9) et que le conflit ne peut être réglé comme en dispose le paragraphe 3 de l'article 25 et lorsque, du fait de cette différence entre les dispositions applicables ou les règles d'imputation, le

revenu ou la fortune dont il s'agit risquerait d'échapper à l'impôt ou d'être insuffisamment imposés qu'il ne le serait en l'absence de ce conflit ; ou

ii) Si, après avoir dûment consulté l'autorité compétente de la Chine, l'autorité compétente allemande notifie à l'autorité compétente chinoise par écrit les autres éléments de revenu auxquels elle a l'intention d'appliquer les dispositions de l'alinéa b). Les doubles impositions concernant ces éléments de revenu sont alors évitées en accordant un crédit d'impôt à partir du premier jour de l'année civile suivant immédiatement celle au cours de laquelle la notification a été faite.

Article 24. Non-discrimination

1. Les ressortissants d'un État contractant ne sont soumis dans l'autre État contractant à aucune imposition ou obligation correspondante qui est autre ou plus lourde que celles auxquelles sont ou pourraient être assujettis les ressortissants de cet autre État qui se trouvent dans la même situation, notamment en matière de résidence. La présente disposition s'applique aussi, nonobstant les dispositions de l'article premier, aux personnes qui ne sont pas des résidents d'un État contractant ou des deux États contractants.

2. L'imposition d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant n'est pas établie dans cet autre État d'une façon moins favorable que l'imposition des entreprises de cet autre État qui exercent les mêmes activités. La présente disposition ne peut être interprétée comme obligeant un État contractant à accorder aux résidents de l'autre État contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

3. À moins que les dispositions du paragraphe 1 de l'article 9, du paragraphe 8 de l'article 11 ou du paragraphe 6 de l'article 12 ne s'appliquent, les intérêts, redevances et autres montants versés par une entreprise d'un État contractant à un résident de l'autre État contractant sont, pour la détermination des bénéfices imposables de cette entreprise, déductibles dans les mêmes conditions que s'ils avaient été payés à un résident du premier État. De même, les dettes d'une entreprise d'un État contractant envers un résident de l'autre État contractant sont, pour la détermination de la fortune imposable de cette entreprise, déductibles dans les mêmes conditions que si elles avaient été contractées envers un résident du premier État cité.

4. Les entreprises d'un État contractant dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre État contractant, ne sont soumises dans le premier État à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celles auxquelles sont ou pourront être assujetties les autres entreprises similaires du premier État.

5. Les dispositions du présent article s'appliquent, nonobstant les dispositions de l'article 2, aux impôts de toute nature ou dénomination.

Article 25. Procédure amiable

1. Lorsqu'une personne estime que les mesures prises par un État contractant ou par les deux États contractants entraînent ou entraîneront pour elle une imposition non conforme aux dispositions du présent Accord, elle peut, indépendamment des recours prévus par le droit interne

de ces États, soumettre son cas aux autorités compétentes de l'État contractant dont elle est un résident ou, si son cas relève du paragraphe 1 de l'article 24, à celles de l'État contractant dont elle possède la nationalité. Le cas doit être soumis dans un délai de trois ans à partir de la première notification des mesures qui entraînent une imposition non conforme aux dispositions du présent Accord.

2. L'autorité compétente s'efforce, si la réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'y apporter une solution satisfaisante, de résoudre le cas par voie amiable avec l'autorité compétente de l'autre État contractant, en vue d'éviter une imposition non conforme au présent Accord. Tout accord conclu est appliqué quels que soient les délais prévus par le droit interne des États contractants.

3. Les autorités compétentes des États contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de l'Accord. Elles peuvent également se concerter en vue d'éliminer les doubles impositions dans les cas non prévus par l'Accord.

4. Les autorités compétentes des États contractants peuvent communiquer entre elles directement en vue de parvenir à un accord au sens des paragraphes précédents. Si nécessaire, les représentants des autorités compétentes et des administrations fiscales responsables peuvent se rencontrer pour un échange de vues.

Article 26. Échange de renseignements

1. Les autorités compétentes des États contractants échangent les renseignements vraisemblablement pertinents pour appliquer les dispositions du présent Accord ou celles de la législation interne relative aux impôts de toute nature ou dénomination perçus pour le compte des États contractants ou de leurs collectivités locales dans la mesure où l'imposition qu'elle prévoit n'est pas contraire au présent Accord. L'échange de renseignements n'est pas limité par les articles premier et 2.

2. Les renseignements reçus en vertu du paragraphe 1 par un État contractant sont tenus secrets de la même manière que les renseignements obtenus en application de la législation interne de cet État et ne sont communiqués qu'aux personnes ou autorités (y compris les tribunaux et organes administratifs) concernées par l'établissement ou le recouvrement des impôts mentionnés au paragraphe 1, par les procédures ou poursuites concernant ces impôts, par les décisions sur les recours relatifs à ces impôts, ou par le contrôle de ce qui précède, afin de veiller à la bonne application du présent Accord et de la législation fiscale. Ces personnes ou autorités n'utilisent les renseignements qu'à ces fins. Elles peuvent divulguer les renseignements au cours d'audiences publiques de tribunaux ou dans des jugements.

3. Les dispositions des paragraphes 1 et 2 ne peuvent en aucun cas être interprétées comme imposant à un État contractant l'obligation :

a) De prendre des mesures administratives dérogeant à sa législation et à sa pratique administrative ou à celles de l'autre État contractant ;

b) De fournir des renseignements qui ne pourraient être obtenus sur la base de sa législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre État contractant ;

c) De fournir des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

4. Si des renseignements sont demandés par un État contractant conformément au présent article, l'autre État contractant utilise ses moyens de collecte de renseignements pour obtenir les renseignements demandés, quand bien même il n'aurait pas besoin de ces renseignements à ses propres fins fiscales. L'obligation contenue dans la phrase précédente est subordonnée aux limitations du paragraphe 3, mais en aucun cas ces limitations ne doivent être interprétées comme autorisant un État contractant à refuser de fournir des renseignements au seul motif qu'il ne détient aucun intérêt national dans de tels renseignements.

5. Les dispositions du paragraphe 3 ne peuvent en aucun cas être interprétées comme autorisant un État contractant à refuser de communiquer des renseignements uniquement parce que ceux-ci sont détenus par une banque, une autre institution financière, un mandataire ou une personne agissant en tant qu'agent ou à titre fiduciaire ou parce que ces renseignements concernent les intérêts fonciers d'une personne.

Article 27. Assistance en matière de recouvrement des impôts

1. Les États contractants se prêtent mutuellement assistance pour le recouvrement de leurs créances fiscales. Les autorités compétentes des États contractants définissent d'un commun accord les modalités d'application du présent article.

2. Les dispositions du présent article ne peuvent en aucun cas être interprétées comme imposant à un État contractant l'obligation :

a) De prendre des mesures administratives dérogeant à sa législation et à sa pratique administrative ou à celles de l'autre État contractant ;

b) De prendre des mesures qui seraient contraires à l'ordre public.

Article 28. Règles de procédure pour l'imposition à la source

1. Si, dans l'un des États contractants, les impôts sur les dividendes, les intérêts, les redevances ou d'autres éléments de revenu d'une personne qui est un résident de l'autre État contractant sont perçus par retenue à la source, le présent Accord n'affecte en rien le droit de prélèvement fiscal du premier État, au taux prévu par sa législation nationale. L'impôt perçu par retenue à la source est remboursé sur demande introduite par le contribuable si, conformément au présent Accord, il n'existe pas d'imposition à la source ou une telle imposition est réduite.

2. Les demandes de remboursement doivent être présentées dans les délais prévus par les dispositions de la législation de l'État contractant d'où proviennent les éléments de revenu.

3. Nonobstant le paragraphe 1, chaque État contractant prévoit des procédures pour que :

a) Les paiements de revenus qui, en vertu du présent Accord, ne sont soumis à aucun impôt dans l'État d'où ils proviennent, puissent être effectués sans déduction d'impôt ;

b) Les paiements de revenus qui, en vertu du présent Accord, sont soumis à un impôt réduit dans l'État d'où ils proviennent ne puissent être effectués qu'avec les déductions d'impôt au taux prévu à l'article pertinent.

4. L'État contractant d'où proviennent les éléments de revenu peut demander à l'autorité compétente d'émettre un certificat de résidence dans l'autre État contractant.

5. Les autorités compétentes peuvent appliquer d'un commun accord les dispositions du présent article, et, si nécessaire, convenir d'autres procédures pour mettre en œuvre les allégements ou les exonérations d'impôt prévus par le présent Accord.

Article 29. Dispositions diverses

1. Il n'est pas possible de bénéficier des avantages prévus par le présent Accord lorsque l'objectif principal de la conclusion de certaines transactions ou de certains montages était de bénéficier de ces avantages et que le bénéfice de ces avantages serait contraire à l'objet et au but des dispositions pertinentes du présent Accord.

2. Le présent Accord ne peut être interprété comme empêchant un État contractant d'appliquer sa législation interne relative à la prévention de la fraude et de l'évasion fiscales.

3. Lorsqu'une personne estime que l'application des paragraphes précédents entraîne pour elle une imposition non conforme aux dispositions du présent Accord, elle peut demander une procédure amiable.

Article 30. Membres de missions diplomatiques et de postes consulaires

Rien dans le présent Accord ne porte atteinte aux privilèges fiscaux dont bénéficient les membres de missions diplomatiques ou de postes consulaires en vertu soit des règles générales du droit international soit des dispositions d'accords particuliers.

Article 31. Protocole

Le Protocole ci-joint fait partie intégrante du présent Accord.

Article 32. Entrée en vigueur

1. Le présent Accord entre en vigueur le trentième jour suivant le jour où les deux États contractants se sont notifié l'accomplissement des procédures juridiques nationales. La date en question correspond à la date à laquelle a été reçue la dernière notification.

2. Les dispositions du présent Accord produisent leurs effets :

a) En ce qui concerne les impôts retenus à la source : à l'égard des sommes payées à partir du 1er janvier, inclus, de l'année civile suivant celle au cours de laquelle l'Accord entre en vigueur ;

b) En ce qui concerne les autres impôts : à l'égard de tout exercice fiscal commençant le 1er janvier de l'année civile suivant celle au cours de laquelle l'Accord entre en vigueur, ou après cette date.

3. La Convention entre la République populaire de Chine et la République fédérale d'Allemagne tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune, signée à Bonn le 10 juin 1985, expire avec l'entrée en vigueur du présent Accord. Les dispositions de la Convention signée à Bonn le 10 juin 1985 continuent de s'appliquer à tous les

cas fiscaux antérieurs à la date d'entrée en vigueur du présent Accord. En tout état de cause, les dispositions de la Convention signée à Bonn le 10 juin 1985 restent applicables jusqu'à ce que le présent Accord prenne effet conformément au paragraphe 2 du présent article.

Article 33. Dénonciation

Le présent Accord reste en vigueur pour une durée indéterminée, mais chaque État contractant peut, au plus tard le 30 juin de toute année civile commençant après l'expiration d'une période de cinq ans à compter de la date à laquelle l'Accord est entré en vigueur, dénoncer celui-ci par une notification écrite adressée à l'autre État contractant par la voie diplomatique, auquel cas le présent Accord cesse de produire ses effets :

a) En ce qui concerne les impôts retenus à la source : à l'égard des sommes payées à partir du 1er janvier ; inclus, de l'année civile suivant celle au cours de laquelle le préavis de dénonciation a été notifié ;

b) En ce qui concerne les autres impôts : à l'égard de tout exercice fiscal commençant le 1er janvier de l'année civile suivant celle au cours de laquelle le préavis de dénonciation a été notifié, ou après cette date.

La date de réception de cette notification par l'autre État contractant fait foi pour déterminer la date d'expiration du délai (le 30 juin de toute année civile).

EN FOI DE QUOI, les soussignés, à ce dûment autorisés, ont signé le présent Accord.

FAIT à Berlin le 28 mars 2014, en deux exemplaires, en langues allemande, chinoise et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation des textes allemand et chinois, le texte anglais prévaut.

Pour la République fédérale d'Allemagne :

[MARKUS EDERER]

[MICHAEL MEISTER]

Pour la République populaire de Chine :

[WANG JU]

PROTOCOLE

Au moment de procéder à la signature de l'Accord entre la République fédérale d'Allemagne et la République populaire de Chine tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune signé le 28 mars 2014 (ci-après dénommé « Accord »), les deux Parties sont convenues des dispositions suivantes qui font partie intégrante de l'Accord :

1. En ce qui concerne l'expression « État contractant » :

S'agissant de la République fédérale d'Allemagne, l'expression « État contractant » comprend les « Länder ». Le terme « Länder » désigne les États allemands conformément à la Loi fondamentale de la République fédérale d'Allemagne.

2. En ce qui concerne l'article 7 :

Les États contractants ont exprimé leur volonté de se référer au Modèle de commentaire de l'OCDE (2008) pour interpréter et appliquer les dispositions de cet article.

3. En ce qui concerne l'alinéa b) du paragraphe 2 de l'article 10 :

Dans le cas de la République fédérale d'Allemagne, un instrument de placement est une société conformément au paragraphe 1 de l'article 1 de la loi allemande sur les sociétés immobilières par actions cotées en Bourse allemandes (loi REIT).

4. En ce qui concerne les articles 10 et 11 :

Nonobstant les dispositions des articles 10 et 11 du présent Accord, les dividendes et les intérêts sont imposables dans l'État contractant d'où ils proviennent et conformément à la législation de cet État :

a) S'ils découlent de droits ou de créances donnant droit à une participation aux bénéfices (y compris les revenus perçus par un associé passif [« stiller Gesellschafter »] au titre de sa participation en cette qualité ou d'un prêt dont le taux d'intérêt est lié aux bénéfices de l'emprunteur [« partiarisches Darlehen »] ou de bénéfices tirés d'obligations participantes [« Gewinnobligationen »] au sens de la législation fiscale de la République fédérale d'Allemagne) ; et

b) À condition qu'ils soient déductibles aux fins du calcul des bénéfices du débiteur de ce revenu.

5. En ce qui concerne l'article 19 :

a) Les dispositions des paragraphes 1 et 2 s'appliquent également aux traitements, salaires et autres rémunérations similaires ainsi qu'aux pensions payés aux personnes physiques au titre de services fournis à la Banque populaire de Chine et à la Deutsche Bundesbank ;

b) Les dispositions du paragraphe 1 s'appliquent de même à l'égard de toute rémunération payée dans le cadre d'un programme d'aide au développement d'un État contractant ou d'une de ses collectivités locales, à partir de fonds fournis exclusivement par cet État ou cette collectivité locale, à un spécialiste ou à un bénévole détaché auprès de l'autre État contractant avec le consentement de cet autre État ;

c) Les dispositions des paragraphes 1 et 2 s'appliquent de même en ce qui concerne les salaires, les traitements et les autres rémunérations ou les pensions similaires, payés :

i) À partir de fonds gouvernementaux allemands à des personnes physiques au titre de services fournis à l'Institut Goethe ;

ii) À partir de fonds gouvernementaux chinois à des personnes physiques au titre de services fournis au Centre culturel chinois ;

iii) À d'autres institutions comparables convenues d'un commun accord par les États contractants.

6. En ce qui concerne l'article 26 :

Si, conformément à la législation nationale, des données personnelles sont échangées en vertu du présent Accord, les dispositions supplémentaires suivantes sont applicables sous réserve de la législation pertinente en vigueur dans chaque État contractant :

a) « Données à caractère personnel » s'entend de toute information relative à une personne physique identifiée ou identifiable ; une personne identifiable est une personne qui peut être identifiée grâce aux informations fournies par l'organisme demandeur ;

b) L'organisme destinataire des données ne peut les utiliser qu'aux fins énoncées à l'article 26 et sous réserve de conditions prescrites par l'organisme fournisseur des données. Les données et informations communiquées en vertu du présent Accord ne doivent pas être utilisées dans des procédures pénales sans le consentement préalable de l'État contractant fournisseur des données, qui doit être donné conformément au droit national et dans le respect de tout accord bilatéral ou multilatéral applicable relatif à l'entraide judiciaire en matière pénale ;

c) L'organisme destinataire informe l'organisme fournisseur, si celui-ci lui en fait la demande, de l'usage qu'il a fait des données fournies et des résultats atteints ;

d) Les informations ne peuvent être communiquées ultérieurement à d'autres organismes non mentionnés au paragraphe 2 de l'article 26 qu'avec l'accord préalable de l'organisme qui les fournit ;

e) L'organisme qui fournit les données doit tout mettre en œuvre pour assurer qu'elles sont exactes, nécessaires et conformes aux fins pour lesquelles elles sont fournies. Toute restriction relative à la communication de données prescrite par la législation interne applicable est respectée. S'il apparaît que des données inexactes ou des données qui ne devaient pas être communiquées l'ont été, l'organisme qui reçoit les renseignements en est avisé dans les meilleurs délais. L'organisme est alors tenu de rectifier ou de supprimer ces données dans les meilleurs délais ;

f) À sa demande, la personne concernée est informée des données fournies à son sujet et de l'utilisation qui en est prévue. La fourniture de ces renseignements n'est pas obligatoire s'il apparaît que leur rétention pour motif d'ordre public l'emporte sur l'intérêt de la personne à les recevoir. À tout autre égard, le droit de la personne concernée à être tenue au courant des données qui la concernent est régi par la législation interne de l'État contractant sur le territoire souverain duquel la demande de renseignements est présentée ;

g) Lorsque le droit interne de l'organisme qui fournit les données prévoit des conditions particulières pour la suppression des données à caractère personnel fournies, cet

organisme doit en informer l'organisme destinataire des données. Indépendamment de la législation, les données à caractère personnel communiquées sont détruites lorsqu'elles ne sont plus nécessaires aux fins pour lesquelles elles ont été fournies ;

h) L'organisme qui fournit les données et celui qui les reçoit conservent un registre officiel des données à caractère personnel échangées ;

i) L'organisme qui fournit les données et celui qui les reçoit sont tenus de prendre des mesures effectives pour protéger les données à caractère personnel fournies contre tout accès, toute altération et toute divulgation non autorisés.

EN FOI DE QUOI, les soussignés, à ce dûment autorisés, ont signé le présent Protocole.

FAIT à Berlin le 28 mars 2014, en deux exemplaires, en langues allemande, chinoise et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation des textes allemand et chinois, le texte anglais prévaut.

Pour la République fédérale d'Allemagne :

[MARKUS EDERER]

[MICHAEL MEISTER]

Pour la République populaire de Chine :

[WANG JU]

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G7 ALLEMAGNE

DRESDEN 2015

29 avril 2015

M 14/07

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Monsieur Zhang,

J'ai l'honneur de vous écrire en votre qualité de Commissaire adjoint de l'Administration nationale des impôts de la République populaire de Chine. Permettez-moi de vous proposer d'apporter les corrections formelles suivantes aux versions allemande et anglaise de l'Accord entre la République populaire de Chine et la République fédérale d'Allemagne en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune qui a été signé à Berlin le 28 mars 2014, ci-après dénommé l'« Accord ».

I. Version allemande

1. Au sous-alinéa (i) de l'alinéa i) du paragraphe 1 de l'article 3, le mot « staatliche » est remplacé par « Staatliche », car il s'agit d'une dénomination officielle.

2. Au sous-alinéa (ii) de l'alinéa e) du paragraphe 2 de l'article 23, le passage

« …wenn die zuständige chinesische Behörde nach gehöriger Konsultation mit der zuständigen deutschen Behörde dieser schriftlich andere Einkünfte notifiziert, bei denen sie die Anrechnungsmethode nach Buchstabe b anzuwenden beabsichtigt. »

est remplacé par :

« …wenn die zuständige deutsche Behörde nach gehöriger Konsultation mit der zuständigen chinesischen Behörde dieser schriftlich andere Einkünfte notifiziert, bei, denen sie Buchstabe b anzuwenden beabsichtigt. »

II. Version anglaise

1. À l'alinéa c) du paragraphe 1 de l'article 3, le mot « term » est remplacé par le mot « terms ».

2. Au paragraphe 3 de l'article 17, le mot « sportsmen » est remplacé par le mot « sportsman ».

3. À l'alinéa b) du paragraphe 1 de l'article 23, le mot « a » est inséré avant le mot « dividend » à la première ligne.

4. Au paragraphe 3 de l'article 29, le mot « result » est remplacé par le mot « results ».

5. À la première ligne du paragraphe 1 de l'article 33, l'expression « Contracting State » est remplacée par l'expression « Contracting States ».

III. Validité des corrections

Les corrections mentionnées aux paragraphes 1 et 2 de la section I ci-dessus et aux paragraphes 1 à 5 de la section II ci-dessus remplacent le libellé précédent des versions allemande et anglaise de l'Accord avec effet rétroactif à la date de la signature de l'Accord.

Si vous acceptez les propositions faites aux sections I à III ci-dessus, l'Accord est dûment corrigé conformément au paragraphe 1 de l'article 79 de la Convention de Vienne sur le droit des traités du 23 mai 1969. Le Gouvernement fédéral introduira ensuite le texte corrigé dans la procédure parlementaire.

Veuillez agréer, Monsieur Zhiyong, les asssurances de ma très haute considération.

MICHAEL MEISTER
Secrétaire d'État parlementaire

Monsieur Zhang Zhiyong
Commissaire adjoint de l'administration nationale des impôts
République populaire de Chine
Beijing

II

ADMINISTRATION NATIONALE DES IMPÔTS RÉPUBLIQUE POPULAIRE DE CHINE

18 juin 2015

Monsieur Meister,

En tant que Commissaire adjoint de l'Administration nationale des impôts de la République populaire de Chine, j'ai l'honneur de vous confirmer la réception de votre lettre du 29 avril 2015, qui se lit comme suit :

[Voir lettre I]

J'ai l'honneur de vous informer que la République populaire de Chine accepte les propositions de la République fédérale d'Allemagne. L'Accord est donc dûment corrigé conformément au paragraphe 1 de l'article 79 de la Convention de Vienne sur le droit des traités du 23 mai 1969.

Veuillez agréer, Monsieur Meister, les assurances de ma très haute considération.

ZHANG ZHIYONG
[Signé]

Monsieur Michael Meister
Secrétaire d'État parlementaire
Ministère fédéral allemand des finances
Berlin

No. 53779

Germany
and
Democratic Republic of the Congo

Agreement between the Government of the Federal Republic of Germany and the Government of the Democratic Republic of the Congo regarding Technical Cooperation in 2012. Kinshasa, 13 November 2013

Entry into force: *13 November 2013 by signature, in accordance with article 5*

Authentic texts: *French and German*

Registration with the Secretariat of the United Nations: *Germany, 22 July 2016*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Allemagne
et
République démocratique du Congo

Accord de coopération technique entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République démocratique du Congo 2012. Kinshasa, 13 novembre 2013

Entrée en vigueur : *13 novembre 2013 par signature, conformément à l'article 5*

Textes authentiques : *français et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 22 juillet 2016*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé, et à la pratique du Secrétariat en matière de publication.

No. 53780

Germany
and
Democratic Republic of the Congo

Agreement between the Government of the Federal Republic of Germany and the Government of the Democratic Republic of the Congo regarding Technical Cooperation in 2013. Kinshasa, 3 December 2014

Entry into force: *3 December 2014 by signature, in accordance with article 5*

Authentic texts: *French and German*

Registration with the Secretariat of the United Nations: *Germany, 22 July 2016*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Allemagne
et
République démocratique du Congo

Accord de coopération technique entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République démocratique du Congo 2013. Kinshasa, 3 décembre 2014

Entrée en vigueur : *3 décembre 2014 par signature, conformément à l'article 5*

Textes authentiques : *français et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 22 juillet 2016*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé, et à la pratique du Secrétariat en matière de publication.

No. 53781

Germany
and
Cameroon

Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Cameroon concerning Financial Cooperation in 2014. Yaoundé, 21 May 2015

Entry into force: *21 May 2015 by signature, in accordance with article 5*

Authentic texts: *French and German*

Registration with the Secretariat of the United Nations: *Germany, 22 July 2016*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Allemagne
et
Cameroun

Accord de coopération financière entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République du Cameroun 2014. Yaoundé, 21 mai 2015

Entrée en vigueur : *21 mai 2015 par signature, conformément à l'article 5*

Textes authentiques : *français et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 22 juillet 2016*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé, et à la pratique du Secrétariat en matière de publication.

No. 53782

Germany
and
Serbia

Exchange of Notes constituting an Arrangement between the Government of the Federal Republic of Germany and the Ministry of Foreign Affairs of the Republic of Serbia concerning the Establishment of a German-Serbian Chamber of Commerce in Belgrade. Belgrade, 21 August 2015 and 3 March 2016

Entry into force: *3 March 2016 by the exchange of the said notes, in accordance with their provisions*

Authentic texts: *German and Serbian*

Registration with the Secretariat of the United Nations: *Germany, 28 July 2016*

Allemagne
et
Serbie

Échange de notes constituant un arrangement entre le Gouvernement de la République fédérale d'Allemagne et le Ministère des affaires étrangères de la République de Serbie concernant la création d'une chambre de commerce germano-serbe à Belgrade. Belgrade, 21 août 2015 et 3 mars 2016

Entrée en vigueur : *3 mars 2016 par l'échange desdites notes, conformément à leurs dispositions*

Textes authentiques : *allemand et serbe*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 28 juillet 2016*

[TEXT IN GERMAN – TEXTE EN ALLEMAND]

I

Botschaft
der Bundesrepublik Deutschland
Belgrad

Gz.: Wi 404.00

Note Nr.: 111 / 2015

Verbalnote

Die Botschaft der Bundesrepublik Deutschland beehrt sich, dem Ministerium für Auswärtige Angelegenheiten der Republik Serbien im Einklang mit den guten Beziehungen zwischen unseren beiden Ländern und in der Absicht, die wirtschaftlichen Beziehungen und insbesondere die Zusammenarbeit auf dem Gebiet des Handels und der Industrie zwischen beiden Ländern, vor allem im Bereich der klein- und mittelständischen Unternehmen, zu fördern, den Abschluss einer Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Serbien über die Gründung einer Deutsch-Serbischen Wirtschaftskammer in Belgrad vorzuschlagen, die folgenden Wortlaut haben soll:

1. Mit dem Ziel, die wirtschaftliche Zusammenarbeit zwischen beiden Ländern wie vorgenannt zu unterstützen, vereinbaren die Regierung der Bundesrepublik Deutschland und die Regierung der Republik Serbien die Gründung einer bilateralen Deutsch-Serbischen Wirtschaftskammer (im Folgenden: Wirtschaftskammer) in Belgrad nach den Bestimmungen des serbischen Rechts. Die Deutsch-Serbische Wirtschaftskammer, deren Mitglieder deutsche und serbische Unternehmen sein können, ist eine juristische Person und wird vom

Ministerium für auswärtige Angelegenheiten
der Republik Serbien
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Belgrad

Deutschen Industrie- und Handelskammertag e.V. (im Folgenden: DIHK) anerkannt. Sie wird die offizielle Bezeichnung „Deutsch-Serbische Wirtschaftskammer" tragen.

2. Zweck der Gründung der Wirtschaftskammer ist die Förderung der Handels- und Wirtschaftsbeziehungen zwischen Unternehmen, Organisationen und Gewerbetreibenden der Republik Serbien und der Bundesrepublik Deutschland. Sie setzt sich für die Interessen der Wirtschaft beider Länder ein und fördert den Wirtschaftsverkehr in beide Richtungen. Die Wirtschaftskammer verfolgt keine Gewinnerzielungszwecke. Sie kann für ihre Dienstleistungen Entgelte zur Deckung der Kosten erheben.

3. Die Wirtschaftskammer wird im Kammerregister der Republik Serbien eingetragen. Der Sitz der Wirtschaftskammer ist Belgrad. Sie kann nach geltendem serbischem Recht weitere Außenstellen im Hoheitsgebiet der Republik Serbien einrichten und unterhalten.

4. Die Wirtschaftskammer wird sich über Mitgliedsbeiträge, die Zuwendung des Bundesministeriums für Wirtschaft und Energie der Bundesrepublik Deutschland, Spenden und andere Einnahmen, die durch das geltende serbische Recht zugelassen sind, finanzieren. Zahlungen, die unmittelbar oder mittelbar von der Bundesrepublik Deutschland an die Wirtschaftskammer zur Deckung der Kosten geleistet werden, sind von direkten Steuern befreit. Die Wirtschaftskammer hat das Recht, nach Maßgabe des jeweiligen innerstaatlichen Rechts Konten in der Republik Serbien sowie in der Bundesrepublik Deutschland zu unterhalten. Über den DIHK geleitete Bundeszuwendungen, die zur Finanzierung der Wirtschaftskammer dienen, können jederzeit, frei und ohne Beschränkung auf die in der Republik Serbien unterhaltenen Konten der Wirtschaftskammer überwiesen werden.

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5. Personen, die in Abstimmung mit oder im Auftrag des DIHK zu den in Nummer 2 genannten Zwecken bei der Wirtschaftskammer beschäftigt werden, sowie deren Familienangehörige, das heißt deren Ehe- oder Lebenspartner und ihre minderjährigen oder in der Ausbildung befindlichen Kinder, sind keine Angehörigen der diplomatischen oder konsularischen Vertretungen der Bundesrepublik Deutschland in der Republik Serbien. Sie genießen nicht die Vorrechte und Immunitäten, die dem Personal solcher Vertretungen gewährt werden.

6. Die zuständigen Behörden in der Republik Serbien erteilen den in Nummer 5 genannten Personen bevorzugt einen Aufenthaltstitel im Rahmen der geltenden Rechtsvorschriften und sonstigen Bestimmungen. Der Aufenthaltstitel beinhaltet das Recht auf mehrfache Ein- und Ausreise im Rahmen seiner Gültigkeitsdauer. Nach Maßgabe des innerstaatlichen Rechts wird der Aufenthaltstitel erstmalig längstens für fünf Jahre erteilt und kann danach verlängert werden. Vor der Einreise in die Republik Serbien zum Dienstantritt ist bei einer diplomatischen oder berufskonsularischen Vertretung der Republik Serbien ein Aufenthaltstitel in Form eines Visums einzuholen. Anträge auf Verlängerung der Gültigkeitsdauer können in der Republik Serbien gestellt werden.

7. Die in Nummer 5 genannten Personen benötigen für die Tätigkeit bei der Wirtschaftskammer keine Arbeitserlaubnis.

8. Die Anzahl der bei der Wirtschaftskammer Beschäftigten soll in einem angemessenen Verhältnis zu dem Zweck stehen, dessen Erfüllung die Einrichtung der Wirtschaftskammer dient.

9. Die steuerliche Behandlung der Gehälter, Löhne und ähnlichen Bezüge der Beschäftigten der Wirtschaftskammer richtet sich nach den jeweils geltenden Übereinkünften

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zwischen der Bundesrepublik Deutschland und der Republik Serbien zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen sowie nach den jeweils geltenden Gesetzen und sonstigen Vorschriften.

10. Die Regierung der Republik Serbien gewährt den Personen, die im Auftrag des DIHK zu den in Nummer 2 genannten Zwecken bei der Wirtschaftskammer beschäftigt sind, und ihren in Nummer 5 genannten Familienangehörigen, für Übersiedlungsgut, das innerhalb von 12 Monaten nach der Übersiedlung in das Hoheitsgebiet der Republik Serbien eingeführt wird, bei der Ein- und Wiederausfuhr die Befreiung von Zöllen und Abgaben mit gleicher Wirkung nach Maßgabe des geltenden Rechts.

11. Diese Vereinbarung wird auf unbestimmte Zeit geschlossen; sie kann unter Einhaltung einer Frist von einem Jahr jederzeit von einer der Vertragsparteien auf diplomatischem Wege schriftlich gekündigt werden.

12. Diese Vereinbarung berührt keine im Verhältnis zwischen der Bundesrepublik Deutschland und der Republik Serbien geltenden zweiseitigen Übereinkünfte.

13. Diese Vereinbarung wird in deutscher und serbischer Sprache geschlossen, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Falls sich die Regierung der Republik Serbien mit dem Vorschlag der Regierung der Bundesrepublik Deutschland einverstanden erklärt, werden diese Verbalnote und die das Einverständnis der Regierung der Republik Serbien zum Ausdruck bringende Antwortnote des Ministeriums für Auswärtige Angelegenheiten der Republik Serbien eine Vereinbarung

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zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Serbien bilden, die mit dem Datum der Antwortnote in Kraft tritt.

Die Botschaft der Bundesrepublik Deutschland benutzt diesen Anlass, dass Ministerium für Auswärtige Angelegenheiten der Republik Serbien erneut ihrer ausgezeichnetsten Hochachtung zu versichern.

Belgrad, den 21. August 2015

2) Siegeln
3) Original scannen
4) ausfahren
5) wv bei Wi-1

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der Republik Serbien
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Belgrad

[TEXT IN SERBIAN – TEXTE EN SERBE]

I

Ambasada
Savezne Republike Nemačke
Beograd

Предмет бр.: Wi 404.00
Нота бр.: 111 /2015

Вербална нота

Амбасада Савезне Републике Немачке има част да Министарству спољних послова Републике Србије, у складу са добрим односима наших двеју земаља и у намери да се унапреде економски односи, а посебно сарадња двеју земаља у области трговине и индустрије, пре свега у области малих и средњих предузећа, предложи склапање споразума између Владе Савезне Републике Немачке и Владе Републике Србије о оснивању Немачко-српске привредне коморе у Београду, чији текст треба да гласи као што следи:

1. У складу са горе наведеним, а у циљу унапређења економске сарадње двеју земаља, Влада Савезне Републике Немачке и Влада Републике Србије су постигле споразум о оснивању билатералне Немачко-српске привредне коморе (у даљем тексту: Привредна комора) у Београду у складу са законодавством Републике Србије. Немачко-српска привредна комора, чији чланови могу бити немачка и српска привредна друштва, је правно лице и призната је од стране

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Удружења немачких индустријско-привредних комора (у даљем тексту: ДИХК). Званични назив коморе ће бити "Немачко-српска привредна комора".

2. Сврха оснивања Привредне коморе је унапређење трговинских и економских односа између привредних друштава, организација и предузетника Републике Србије и Савезне Републике Немачке. Она се залаже за интересе привреде обеју земаља и унапређује пословне активности у оба правца. Делатност Привредне коморе није усмерена на стицање добити. За пружене услуге Привредна комора може наплаћивати накнаде ради покривања трошкова.

3. Привредна комора се уписује у Регистар комора Републике Србије. Седиште Привредне коморе је Београд. Према важећем законодавству Републике Србије она може оснивати и имати своје подружнице на територији Републике Србије.

4. Привредна комора ће се финансирати од чланарина, дотације Савезног министарства привреде и енергетике Савезне Републике Немачке, донација и других прихода који су дозвољени у складу са важећим законодавством Републике Србије. Плаћања, која Савезна Република Немачка непосредно или посредно врши у корист Привредне коморе ради покривања трошкова, су ослобођена од директних пореза. Привредна комора има право да, у складу са националним законодавством, отвори банкарске рачуне у Републици Србији, као и у Савезној Републици Немачкој. Дотације Савезне Републике Немачке, које се преко ДИХК додељују Привредној комори за финансирање, могу се у свако доба слободно и без ограничења уплаћивати на рачуне које Привредна комора има у Републици Србији.

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5. Лица, која се у договору са ДИХК или по његовом налогу у сврху назначену под бројем 2. запошљавају у Привредној комори, као и чланови њихових породица, тј. њихови брачни или животни партнери и малолетна деца или деца која се налазе на школовању, нису чланови дипломатских или конзуларних представништава Савезне Републике Немачке у Републици Србији. Ова лица не уживају привилегије и имунитете који се признају особљу таквих представништава.

6. Надлежни органи Републике Србије одобравају лицима наведеним под бројем 5. по повлашћеним условима боравишни статус, у складу са правним и другим прописима. Боравишни статус подразумева право на вишекратни улазак и излазак за време његовог рока важења. Боравишни статус се по први пут одобрава максимално на пет година и може да буде продужен, у складу са националним законодавством. Пре уласка у Републику Србију ради ступања на дужност потребно је да се у дипломатском или конзуларном представништву Републике Србије поднесе захтев за одобрење боравишног статуса у облику визе. Захтеви за продужење рока важења могу се подносити у Републици Србији.

7. Лицима наведеним под бројем 5. за обављање делатности у Привредној комори није потребна дозвола за рад.

8. Број запослених у Привредној комори треба да буде у адекватној сразмери са сврхом чијем испуњењу служи оснивање Привредне коморе.

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9. Порески третман зарада, плата и сличних примања лица запослених у Привредној комори утврђује се у складу са одредбама односних споразума који важе између Савезне Републике Немачке и Републике Србије и који се односе на избегавање двоструког опорезивања у односу на порезе на доходак и на имовину, као и у складу са важећим законима и другим прописима.

10. У складу са важећим законодавством, Влада Републике Србије одобрава лицима која су по налогу ДИХК запослена у Привредној комори у сврху назначену под бројем 2., као и члановима њихових породица, назначених под бројем 5., да се њихове селидбене ствари, које се увозе на територију Републике Србије у року од 12 месеци након пресељења, приликом увоза и поновног извоза са истим дејством ослобађају од плаћања царина и дажбина.

11. Овај споразум се закључује на неодређено време; он може бити отказан у писаној форми дипломатским путем у свако доба од једне од уговорних страна, уз придржавање отказног рока од једне године.

12. Овај споразум не утиче на билатералне споразуме који важе у односу између Савезне Републике Немачке и Републике Србије.

13. Овај споразум се склапа на немачком и српском језику, при чему су оба текста подједнако веродостојна.

Министарство спољних послова
Републике Србије
- Дипломатски протокол –
Београд

Уколико је Влада Републике Србије сагласна са предлогом Владе Савезне Републике Немачке, ова вербална нота и одговор на ову ноту којом Министарство спољних послова Републике Србије изражава своју сагласност, чиниће споразум између Владе Савезне Републике Немачке и Владе Републике Србије који ће ступити на снагу датумом вербалне ноте у одговору.

Амбасада Савезне Републике Немачке користи и ову прилику да Министарству спољних послова Републике Србије понови изразе свог особитог поштовања.

Београд, 21. августа 2015. године

Министарство спољних послова
Републике Србије
- Дипломатски протокол –
Београд

II

Бр. 8924

Вербална нота

Министарство спољних послова Републике Србије изражава своје поштовање Амбасади Савезне Републике Немачке и, у вези са њеном нотом бр. 111/2015 од 21. августа 2015. године, има част да обавести да је Влада Републике Србије сагласна са предлогом Владе Савезне Републике Немачке да се, у складу са добрим односима наших двеју земаља и у намери да се унапреде економски односи, а посебно сарадња двеју земаља у области трговине и индустрије, пре свега у области малих и средњих предузећа, склопи споразум између Владе Републике Србије и Владе Савезне Републике Немачке о оснивању Немачко-српске привредне коморе у Београду, чији текст гласи као што следи:

[See note I – Voir note I]

Министарство спољних послова Републике Србије обавештава да је Влада Републике Србије сагласна са предлогом Владе Савезне Републике Немачке да ова вербална нота и вербална нота Амбасаде Савезне Републике Немачке бр. 111/2015 од 21.августа 2015. године чине Споразум између Владе Републике Србије и Владе Савезне Републике Немачке о оснивању Немачко-српске привредне коморе у Београду, који ће ступити на снагу датумом ове вербалне ноте Министарства спољних послова Републике Србије.

Министарство спољних послова Републике Србије користи и ову прилику да Амбасади Савезне Републике Немачке понови изразе свог високог уважавања.

Београд, 3. март 2016. године

Амбасада
Савезне Републике Немачке
Београд

[TRANSLATION – TRADUCTION]

I

EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY

Belgrade, 21 August 2015

Gz.: Wi 404.00
Note No.: 111/2015

NOTE VERBALE

The Embassy of the Federal Republic of Germany has the honour to propose to the Ministry of Foreign Affairs of the Republic of Serbia, taking into account the good relations between our two countries and in order to promote economic relations, in particular cooperation in the fields of trade and industry, between both countries, especially in the area of small- and medium-sized enterprises, the conclusion of an Arrangement between the Government of the Federal Republic of Germany and the Government of the Republic of Serbia regarding the establishment of a German-Serbian Chamber of Commerce in Belgrade, to be worded as follows:

1. With a view to supporting economic cooperation between both countries, as mentioned above, the Government of the Federal Republic of Germany and the Government of the Republic of Serbia agree to establish a bilateral German-Serbian Chamber of Commerce (hereinafter referred to as the "Chamber of Commerce") in Belgrade in accordance with the provisions of Serbian law. The German-Serbian Chamber of Commerce, whose members may be German or Serbian companies, is a legal entity and shall be recognized by the Association of German Chambers of Industry and Commerce (Deutschen Industrie- und Handelskammertag e.V., hereinafter referred to as "DIHK"). It shall bear the official name of "Deutsch-Serbische Wirtschaftskammer" (German-Serbian Chamber of Commerce).

2. The purpose of establishing the Chamber of Commerce is to promote trade and economic relations between enterprises, organizations and businesspeople of the Republic of Serbia and the Federal Republic of Germany. The Chamber shall promote the interests of the economies of the two countries and promote commercial trade in both directions. The Chamber shall not seek to make a profit; it may charge fees to cover the costs of services that it provides.

3. The Chamber of Commerce shall be registered with the Register of Chambers of Commerce of the Republic of Serbia. The Chamber of Commerce shall have its headquarters in Belgrade. It may, in accordance with applicable Serbian law, establish and maintain branch offices in the territory of the Republic of Serbia.

4. The Chamber of Commerce shall be financed by membership dues, the contribution of the Federal Ministry for Economic Affairs and Energy of the Federal Republic of Germany, donations and other revenues admissible under applicable Serbian law. Payments made directly or indirectly by the Federal Republic of Germany to the Chamber of Commerce to cover costs shall be exempt from direct taxation. In accordance with the respective national law, the Chamber of Commerce has the right to maintain accounts in the Republic of Serbia and the Federal Republic of Germany.

Federal subsidies provided through DIHK and serving to finance the Chamber of Commerce may at any time, freely and without restriction, be transferred to the accounts maintained by the Chamber of Commerce in the Republic of Serbia.

5. Persons employed at the Chamber of Commerce in coordination with or on behalf of DIHK for the purposes specified in paragraph 2 and their dependants, i.e., their spouses or life partners and minor children, or children still enrolled in full-time education, shall not be members of diplomatic or consular delegations of the Federal Republic of Germany in the Republic of Serbia. Such persons shall not enjoy the privileges and immunities accorded to the staff of such delegations.

6. The competent authorities of the Republic of Serbia shall, on a priority basis, grant the persons referred to in paragraph 5 a residence title in accordance with the applicable legislation and other provisions. The residence title shall include the right to multiple entries and departures during its period of validity. The residence title shall be granted in accordance with national law for an initial period of up to five years, and may be extended thereafter. Prior to entry into the Republic of Serbia to take up an appointment, a residence title in the form of a visa must be obtained from a diplomatic or professional consular delegation of the Republic of Serbia. Requests for the extension of the period of validity may be filed in the Republic of Serbia.

7. The persons referred to in paragraph 5 shall not require a work permit for their activity with the Chamber of Commerce.

8. The number of persons employed at the Chamber of Commerce shall be proportionate to the purpose pursued through the establishment of the Chamber of Commerce.

9. The tax treatment of the salaries, wages and similar earnings of the employees of the Chamber of Commerce shall be governed by the currently applicable agreements between the Federal Republic of Germany and the Republic of Serbia concerning the avoidance of double taxation with respect to income and property taxes and the laws and other provisions currently applicable.

10. The Government of the Republic of Serbia shall grant, to persons employed at the Chamber of Commerce on behalf of DIHK for the purposes specified in paragraph 2 and their dependants specified in paragraph 5, exemption, in accordance with applicable law, from customs duties and charges having equivalent effect in respect of the import and re-export of household goods imported within 12 months after moving into the territory of the Republic of Serbia.

11. This Arrangement shall be concluded for a period of indefinite duration; it may be terminated at any time subject to one year’s written notice transmitted through the diplomatic channel by one of the Contracting Parties.

12. This Arrangement shall not affect any bilateral agreements applicable to relations between the Federal Republic of Germany and the Republic of Serbia.

13. This Arrangement shall be concluded in German and Serbian, both texts being equally authentic.

If the Government of the Republic of Serbia agrees with the proposal of the Government of the Federal Republic of Germany, this Note Verbale and the response Note of the Ministry of Foreign Affairs of the Republic of Serbia expressing the consent of the Government of the Republic of Serbia shall constitute an Arrangement between the Government of the Federal Republic of Germany and the Government of the Republic of Serbia, which shall enter into force on the date of the response Note.

The Embassy of the Federal Republic of Germany avails itself of this opportunity to convey to the Ministry of Foreign Affairs of the Republic of Serbia the renewed assurances of its highest consideration.

Ministry of Foreign Affairs
of the Republic of Serbia
Protocol
Belgrade

II

Belgrade, 3 March 2016

No.: 8924

NOTE VERBALE

The Ministry of Foreign Affairs of the Republic of Serbia has the honour to inform the Embassy of the Federal Republic of Germany, in connection with its Note No. 111/2015 dated 21 August 2015, that the Government of the Republic of Serbia agrees with the proposal of the Government of the Federal Republic of Germany, in view of the good relations between our two countries and in order to promote economic relations, particularly cooperation in the area of trade and industry, between our two countries, especially in the area of small- and medium-sized enterprises, the conclusion of an Arrangement between the Government of the Republic of Serbia and the Government of the Federal Republic of Germany regarding the establishment of a German-Serbian Chamber of Commerce in Belgrade, which reads as follows:

[See note I]

The Ministry of Foreign Affairs of the Republic of Serbia informs that the Government of the Republic of Serbia accepts the proposal of the Government of the Federal Republic of Germany, according to which this Note Verbale and the Note Verbale from the Embassy of the Federal Republic of Germany No. 111/2015 dated 21 August 2015 constitute an Arrangement between the Government of the Republic of Serbia and the Government of the Federal Republic of Germany on the creation of a "German-Serbian Chamber of Commerce" in Belgrade, which enters into force on the date of this Note Verbale from the Ministry of Foreign Affairs of the Republic of Serbia.

The Ministry of Foreign Affairs of the Republic of Serbia avails itself of this opportunity to convey to the Embassy of the Federal Republic of Germany the renewed assurances of its highest consideration.

Ministry of Foreign Affairs
Republic of Serbia
Belgrade

Embassy of the Federal Republic of Germany
Belgrade

[TRANSLATION – TRADUCTION]

I

AMBASSADE DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Belgrade, le 21 août 2015

Réf. : Wi 404.00
Note n° : 111/2015

NOTE VERBALE

L'ambassade de la République fédérale d'Allemagne a l'honneur de proposer au Ministère des affaires étrangères de la République de Serbie, eu égard aux bonnes relations qui existent entre les deux pays et dans le but de promouvoir les relations économiques, et en particulier la coopération dans le domaine commercial et industriel, entre les deux pays, surtout en ce qui concerne les petites et moyennes entreprises, de conclure un arrangement entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République de Serbie aux fins de la création d'une chambre de commerce germano-serbe à Belgrade, qui se lit comme suit :

1. Dans le but de soutenir la coopération économique entre nos deux pays, comme mentionné ci-dessus, le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République de Serbie conviennent de créer à Belgrade une chambre de commerce bilatérale germano-serbe (ci-après dénommée la « Chambre de commerce ») conformément aux dispositions du droit serbe applicable. La Chambre de commerce germano-serbe, dont les membres peuvent être des entreprises allemandes ou serbes, est une personne morale et est reconnue par l'Association des chambres de commerce et d'industrie allemandes (Deutschen Industrie- und Handelskammertag e.V., ci-après dénommée « DIHK »). Elle porte la dénomination officielle de « Deutsch-Serbische Wirtschaftskammer » (Chambre de commerce germano-serbe).

2. La création de la Chambre de commerce a pour objectif de promouvoir les relations commerciales et économiques entre les entreprises, les organisations et les personnes exerçant une activité commerciale ou industrielle en République de Serbie et en République fédérale d'Allemagne. La Chambre œuvre dans l'intérêt de l'économie des deux pays et favorise les échanges commerciaux dans les deux sens. La Chambre est une entité sans but lucratif ; elle peut percevoir des frais afin de couvrir les coûts engagés dans le cadre de ses services.

3. La Chambre de commerce est inscrite au registre des chambres de commerce de la République de Serbie. Son siège est établi à Belgrade. Conformément au droit applicable en Serbie, elle peut créer et gérer d'autres antennes sur le territoire de la République de Serbie.

4. La Chambre de commerce est financée par des cotisations versées par ses membres, par la contribution du Ministère fédéral de l'économie et de l'énergie de la République fédérale d'Allemagne et par des dons et d'autres revenus admis par le droit applicable en Serbie. Les sommes versées directement ou indirectement par la République fédérale d'Allemagne à la Chambre de commerce et servant à couvrir les coûts engagés par cette dernière sont exonérées d'impôts directs. Conformément à la législation nationale en vigueur dans chaque pays, la

Chambre de commerce peut tenir des comptes en République de Serbie et en République fédérale d'Allemagne. Les aides fédérales versées par l'intermédiaire de la DIHK et servant à financer la Chambre de commerce peuvent, à tout moment, être transférées, librement et sans restriction, sur les comptes tenus par la Chambre de commerce en République de Serbie.

5. Les personnes employées à la Chambre de commerce en accord avec la DIHK ou pour le compte de celle-ci aux fins visées au paragraphe 2, de même que les personnes à leur charge (conjoints, concubins, enfants mineurs et enfants encore scolarisés à plein temps), ne sont pas considérés comme des membres des délégations diplomatiques ou consulaires de la République fédérale d'Allemagne en République de Serbie. Ces personnes ne jouissent pas des privilèges et immunités octroyés au personnel de ces délégations.

6. Les autorités compétentes de la République de Serbie délivrent, en priorité, un titre de séjour aux personnes visées au paragraphe 5 conformément à la législation et aux autres dispositions applicables. Le titre de séjour confère le droit d'entrer et de sortir du pays à de multiples reprises pendant sa période de validité. Le titre de séjour est délivré, conformément au droit interne, pour une durée initiale maximale de cinq ans et pourra être prolongé par la suite. Avant d'entrer en République de Serbie en vue d'une prise de fonctions, un titre de séjour sous forme de visa doit être obtenu auprès d'une délégation diplomatique ou consulaire de la République de Serbie. Les demandes de prolongation de la durée de validité peuvent être introduites en République de Serbie.

7. Les personnes visées au paragraphe 5 n'ont pas besoin de permis de travail pour exercer leurs activités auprès de la Chambre de commerce.

8. Le nombre de personnes employées à la Chambre de Commerce être proportionné à l'objectif visé par la création de la Chambre de Commerce.

9. Le traitement fiscal des salaires, traitements et autres revenus de même nature des employés de la Chambre de commerce sont régis par les accords actuellement applicables entre la République fédérale d'Allemagne et la République de Serbie tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune, et par la législation et les autres dispositions applicables.

10. Conformément au droit applicable, le Gouvernement de la République de Serbie exempte, tant à l'importation qu'à la réexportation, les personnes employées à la Chambre de commerce pour le compte de la DIHK aux fins visées au paragraphe 2, ainsi que les personnes à leur charge définies au paragraphe 5, du paiement des droits de douane et des taxes d'effet équivalent sur l'importation et la réexportation du mobilier et des effets personnels importés sur le territoire de la République de Serbie dans un délai de 12 mois à compter de la date du déménagement.

11. Le présent Arrangement est conclu pour une durée indéterminée ; il peut être dénoncé à tout moment moyennant un préavis écrit d'un an adressé par la voie diplomatique par l'une des Parties contractantes.

12. Le présent Arrangement est sans incidence sur les accords bilatéraux qui régissent les relations entre la République fédérale d'Allemagne et la République de Serbie.

13. Le présent Arrangement est conclu en langues allemande et serbe, les deux textes faisant également foi.

Si le Gouvernement de la République de Serbie accepte la proposition du Gouvernement de la République fédérale d'Allemagne, la présente note et la note de réponse du Ministère des affaires étrangères de la République de Serbie exprimant le consentement du Gouvernement de la République de Serbie constituent un arrangement entre le Gouvernement de la République

fédérale d'Allemagne et le Gouvernement de la République de Serbie, qui entre en vigueur à la date de la note de réponse.

L'ambassade de la République fédérale d'Allemagne saisit cette occasion pour renouveler au Ministre des affaires étrangères de la République de Serbie les assurances de sa très haute considération.

Ministère des affaires étrangères
de la République de Serbie
Protocole
Belgrade

II

Belgrade, le 3 mars 2016

N° 8924

NOTE VERBALE

Le Ministère des affaires étrangères de la République de Serbie a l'honneur d'informer l'ambassade de la République fédérale d'Allemagne, en référence à sa note n° 111/2015 du 21 août 2015, que le Gouvernement de la République de Serbie accepte la proposition du Gouvernement de la République fédérale d'Allemagne, eu égard aux bonnes relations qui existent entre nos deux pays et dans le but de promouvoir les relations économiques, et en particulier la coopération dans le domaine commercial et industriel, entre nos deux pays, surtout en ce qui concerne les petites et moyennes entreprises, de conclure un arrangement entre le Gouvernement de la République de Serbie et le Gouvernement de la République fédérale d'Allemagne aux fins de la création d'une chambre de commerce germano-serbe à Belgrade, qui se lit comme suit :

[Voir note I]

Le Ministère des affaires étrangères de la République de Serbie déclare que le Gouvernement de la République de Serbie accepte la proposition du Gouvernement de la République fédérale d'Allemagne, selon laquelle la présente note et la note de l'ambassade de la République fédérale d'Allemagne n° 111/2015 du 21 août 2015 constituent un Arrangement entre le Gouvernement de la République de Serbie et le Gouvernement de la République fédérale d'Allemagne portant création d'une « Chambre de commerce germano-serbe » à Belgrade, qui entre en vigueur à la date de la présente note du Ministère des affaires étrangères de la République de Serbie.

Le Ministère des affaires étrangères de la République de Serbie saisit cette occasion pour renouveler à l'ambassade de la République fédérale d'Allemagne les assurances de sa très haute considération.

Ministère des affaires étrangères
République de Serbie
Belgrade

Ambassade de la République fédérale d'Allemagne
Belgrade

No. 53783

Germany
and
Rwanda

Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Rwanda concerning financial cooperation in 2015. Kigali, 18 May 2016

Entry into force: *18 May 2016 by signature, in accordance with article 5*

Authentic texts: *English and German*

Registration with the Secretariat of the United Nations: *Germany, 28 July 2016*

Not published in print, in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Allemagne
et
Rwanda

Accord entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République du Rwanda concernant la coopération financière en 2015. Kigali, 18 mai 2016

Entrée en vigueur : *18 mai 2016 par signature, conformément à l'article 5*

Textes authentiques : *anglais et allemand*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Allemagne, 28 juillet 2016*

Non disponible en version imprimée, conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé, et à la pratique du Secrétariat en matière de publication.

No. 53784

Japan
and
Australia

Agreement between Japan and Australia for an Economic Partnership (with annexes and implementing agreement). Canberra, 8 July 2014

Entry into force: *15 January 2015, in accordance with article 20*

Authentic texts: *English and Japanese*

Registration with the Secretariat of the United Nations: *Japan, 27 July 2016*

Only the authentic English text of the Agreement and its implementing agreement are published in this volume. The Japanese authentic text of the Agreement and the French translation are published in volume 3135. The annexes are not published herein, in accordance with article 12 (2) of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations, as amended, and the publication practice of the Secretariat.

Japon
et
Australie

Accord de partenariat économique entre le Japon et l'Australie (avec annexes et accord d'exécution). Canberra, 8 juillet 2014

Entrée en vigueur : *15 janvier 2015, conformément à l'article 20*

Textes authentiques : *anglais et japonais*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Japon, 27 juillet 2016*

Seuls le texte authentique anglais de l'accord et son accord d'exécution sont publiés dans ce volume. Le texte authentique japonais de l'accord et la traduction en français sont publiés dans le volume 3135. Les annexes ne sont pas publiées ici, conformément aux dispositions de l'article 12, paragraphe 2, des réglementations de l'Assemblée générale, en application de l'article 102 de la Charte des Nations Unies, tel qu'amendé, et de la pratique du Secrétariat en matière de publication.

[TEXT IN ENGLISH – TEXTE EN ANGLAIS]

AGREEMENT BETWEEN JAPAN AND AUSTRALIA FOR AN ECONOMIC PARTNERSHIP

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GOVERNMENT PROCUREMENT

PREAMBLE

Japan and Australia (hereinafter referred to as "the Parties"),

CONSCIOUS of their longstanding friendship and ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

DETERMINED to strengthen their economic partnership through liberalisation and facilitation of trade and investment;

DETERMINED to establish a framework for enhanced cooperation to promote a predictable, transparent and consistent business environment that will lead to the improvement of economic efficiency and the development of trade and investment;

DESIRING to foster creativity, innovation and links between dynamic sectors of their economies;

SEEKING to create larger and new markets and to enhance the attractiveness and vibrancy of the markets of the Parties;

RECALLING the contribution made to the development of the bilateral trade relationship between the Parties by the Agreement on Commerce between Japan and the Commonwealth of Australia, signed at Hakone on 6 July 1957, as amended by the Protocol signed at Tokyo on 5 August 1963, and the Basic Treaty of Friendship and Co-operation between Japan and Australia, signed at Tokyo on 16 June 1976;

DETERMINED to build on their rights and obligations under the WTO Agreement and other agreements to which they are both parties; and

CONVINCED that this Agreement would open a new era for the relationship between the Parties;

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

Article 1.1
Establishment of a Free Trade Area

The Parties hereby establish a free trade area consistent with Article XXIV of the GATT 1994 and Article V of the GATS.

Article 1.2
General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) the term "Agreement on Anti-Dumping" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(b) the term "Agreement on Customs Valuation" means 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 term "Agreement on Subsidies and Countervailing Measures" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

(d) the term "Area" means:

(i) for Australia, the Commonwealth of Australia:

(A) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(B) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf, over which Australia exercises sovereign rights or jurisdiction in accordance with international law; and

(ii) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

(e) the term "customs administration" means the administration that, in accordance with the laws and regulations of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations;

(f) the term "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-Dumping, and the Agreement on Subsidies and Countervailing Measures; or

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

(g) the term "days" means calendar days, including weekends and holidays;

(h) the term "enterprise" means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other entity constituted or organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled;

(i) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(j) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(k) the term "government procurement" means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

(l) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, including the General Rules for the Interpretation of the Harmonized System, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective laws;

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

(n) the term "natural person of a Party" means a natural person who is:

(i) for Australia, an Australian citizen or permanent resident, as defined in accordance with its laws and regulations; and

(ii) for Japan, a national of Japan, as defined in accordance with its laws and regulations;

(o) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3 (Rules of Origin);

(p) the term "person" means either a natural person or an enterprise;

(q) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(r) the term "SPS measure" means any sanitary or phytosanitary measure referred to in paragraph 1 of Annex A to the SPS Agreement;

(s) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and

(t) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

Article 1.3
Transparency

1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement, are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for the laws, regulations, administrative procedures and administrative rulings referred to in paragraph 1.

3. Each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1.

4. When introducing or changing its laws, regulations or administrative procedures that significantly affect the implementation of this Agreement, each Party shall endeavour to take appropriate measures to enable interested persons and the other Party to become acquainted with such introduction or change.

Article 1.4
Public Comment Procedures

To the extent practicable and subject to its laws and regulations, each Party shall provide a reasonable opportunity for comments on any measure of general application it proposes to adopt with respect to any matter covered by this Agreement.

Article 1.5
Administrative Proceedings

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of the Government of a Party, the competent authorities shall, subject to the laws and regulations of the Party:

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party; and

(b) provide, within a reasonable period of time, information concerning the status of the application, on request of the applicant.

2. Recognising the importance of administering its laws, regulations, administrative procedures, and administrative rulings of general application in a consistent, impartial and reasonable manner, each Party shall ensure, subject to its laws and regulations, that its competent authorities, prior to any final administrative decision which imposes obligations on or restricts rights of a person, provide that person with:

(a) when the process is initiated, reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of the positions of such person,

provided that time, the nature of the measure and the public interest permit.

Article 1.6
Review and Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative actions relating to matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that such decision is implemented by the relevant competent authorities with respect to the administrative action at issue.

Article 1.7
Confidential Information

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

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

Article 1.8
Taxation

1. Unless otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

Note: the term "taxation measures" shall not include:

(a) a customs duty as defined in subparagraph (f) of Article 1.2;

(b) an anti-dumping or countervailing duty referred to in subparagraph (f)(ii) of Article 1.2; and

(c) fees or charges referred to in subparagraph (f)(iii) of Article 1.2.

2. The following provisions shall apply to taxation measures:

(a) Articles 1.3, 1.6 and 1.7, to the extent that the provisions of this Agreement are applicable to such taxation measures;

(b) Article 2.3 (Trade in Goods - National Treatment) to the same extent as Article III of the GATT 1994 and Article 2.6 (Trade in Goods - Export Duties);

(c) Article 9.4 (Trade in Services - National Treatment);

(d) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

(e) Articles 14.3 (Investment - National Treatment) and 14.4 (Investment - Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

(f) Article 14.11 (Investment - Expropriation and Compensation), to the extent that such taxation measures constitute expropriation under Chapter 14 (Investment); and

(g) Article 14.6 (Investment - Access to the Courts of Justice), where Article 14.11 (Investment - Expropriation and Compensation) applies to taxation measures in accordance with subparagraph (f).

3. Notwithstanding paragraph 2, nothing in the Articles referred to in that paragraph shall apply to:

(a) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;

(b) the continuation or prompt renewal of a non-conforming provision of any taxation measure referred to in subparagraph (a);

(c) an amendment or modification to a non-conforming provision of any taxation measure referred to in subparagraph (a), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with any of those Articles;

(d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or

(e) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax agreement. In the event of any inconsistency relating to a taxation measure between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a tax agreement between the Parties any consultations about whether any inconsistency exists shall include the competent authorities of each Party under that tax agreement.

5. Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax agreement.

Article 1.9
General Exceptions

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures), 5 (Sanitary and Phytosanitary Cooperation), 6 (Technical Regulations, Standards and Conformity Assessment Procedures), 7 (Food Supply), 8 (Energy and Mineral Resources) and 13 (Electronic Commerce), Article XX of the GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 9 (Trade in Services), 10 (Telecommunications Services), 11 (Financial Services), 12 (Movement of Natural Persons) and 13 (Electronic Commerce), Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 1.10
Security Exceptions

Nothing in this Agreement shall be construed:

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

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

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

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

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

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

Article 1.11
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement and any other agreements to which both Parties are party.

2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

3. Unless otherwise provided for in this Agreement, if any international agreement, or provision therein, incorporated into or referred to in this Agreement is amended, the Parties shall consult on whether it is necessary to amend this Agreement.

4. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles goods, services, or persons to treatment more favourable than that accorded by this Agreement.

5. In the event of any inconsistency between this Agreement and the Agreement on Commerce between Japan and the Commonwealth of Australia or the Basic Treaty of Friendship and Co-operation between Japan and Australia, this Agreement shall prevail to the extent of inconsistency.

Article 1.12
Implementing Agreement

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to as "the Implementing Agreement").

Article 1.13
Joint Committee

1. The Parties hereby establish a Joint Committee under this Agreement.

2. The functions of the Joint Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Agreement;

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting any necessary decisions, including those referred to the Joint Committee under the relevant provisions of this Agreement; and

(e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

(a) shall be composed of representatives of the Governments of the Parties; and

(b) may establish and delegate its responsibilities to Sub-Committees.

4. The Joint Committee shall meet once a year alternately in Japan and Australia, unless the Parties otherwise agree.

Article 1.14
Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

CHAPTER 2
TRADE IN GOODS

SECTION 1
GENERAL RULES

Article 2.1
Definitions

For the purposes of this Chapter:

(a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(b) the term "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(c) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(d) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 1 of Article 2.13;

(e) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

(f) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(g) the term "export subsidy" means any subsidy as defined in subparagraph 1(a) of Article 3 of the Agreement on Subsidies and Countervailing Measures or export subsidies listed in subparagraphs 1(a) through 1(f) of Article 9 of the Agreement on Agriculture;

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

(i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in paragraph 1 of Article 2.17;

(j) the term "serious injury" means a significant overall impairment in the position of a domestic industry;

(k) the term "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

(l) the term "transition period" means, in relation to a particular originating good, the period from the entry into force of this Agreement until eight years after the date of entry into force of this Agreement or five years after the date on which elimination or reduction of the customs duty on that good is completed in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), whichever is longer.

Article 2.2
Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

Article 2.3
National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end, Article III of the GATT 1994 is incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 2.4
Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

2. On request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), in accordance with the terms and conditions set out in such Schedules.

3. If, as a result of the elimination or reduction of its customs duty applied on a particular good on a most-favoured-nation basis, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.

4. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

Article 2.5
Customs Valuation

Each Party shall determine the customs value of goods traded between the Parties in accordance with Part I of the Agreement on Customs Valuation.

Article 2.6
Export Duties

Neither Party shall adopt or maintain any duties on a good exported from the Party into the other Party, unless such duties are not in excess of those imposed on the like good destined for domestic consumption.

Article 2.7
Export Subsidies

Neither Party shall introduce or maintain any export subsidy on any good destined for the other Party.

Article 2.8
Non-Tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures, including quantitative restrictions, on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party, except in accordance with its rights and obligations under the WTO Agreement or as otherwise provided for in this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions, and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 2.9
Administrative Fees and Charges

1. Each Party shall ensure that all fees and charges imposed on or in connection with the importation or exportation of goods are consistent with Article VIII of the GATT 1994.

2. Each Party shall make available on the Internet details of fees and charges it imposes in connection with the importation and exportation of goods as soon as practically possible.

Article 2.10
Administration of Trade Regulations

1. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings of general application respecting any matter covered by this Chapter. To this end, Article X of the GATT 1994 is incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. To the extent possible, each Party shall make its laws, regulations, decisions and rulings of the kind referred to in paragraph 1 publicly available on the Internet.

Article 2.11
Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import licensing measures are administered in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures.

2. Promptly after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures. The notification shall include the information specified in Article 5 of the Agreement on Import Licensing Procedures.

3. Any new import licensing procedure or change to an import licensing procedure shall be made available on the Internet and published in the sources notified to the Committee on Import Licensing established by Article 4 of the Agreement on Import Licensing Procedures, whenever practicable, 21 days prior to the effective date of such new procedure or change but in all events not later than the effective date.

4. On request of the other Party, a Party shall, promptly and to the extent possible, respond to the request of that Party for information on an import licensing measure of general application.

Article 2.12
Anti-Dumping Measures and Countervailing Measures

With respect to anti-dumping measures and countervailing measures, the Parties reaffirm their commitment to the provisions of the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures.

SECTION 2
SAFEGUARD MEASURES

Article 2.13
Application of Bilateral Safeguard Measures

1. Subject to the provisions of this Section, during the transition period, each Party may apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury or threat thereof, to the domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

(a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or

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

(i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is applied; and

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

Article 2.14
Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. In the investigation referred to in paragraph 1, to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Section, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than increased imports of the originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4 are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

Article 2.15
Conditions and Limitations

1. With regard to a bilateral safeguard measure, a Party shall immediately deliver a written notice to the other Party upon:

(a) initiating an investigation referred to in Article 2.14 relating to serious injury, or threat thereof, and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4;

(c) taking a decision to apply or extend a bilateral safeguard measure; and

(d) taking a decision to modify the bilateral safeguard measure for progressive liberalisation.

2. The Party delivering the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

(a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation including its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and

(b) in the written notice referred to in subparagraphs 1(b), (c), and (d), evidence of serious injury or threat thereof caused by the increased imports of the originating good as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, a precise description of the originating good subject to the proposed bilateral safeguard measure including its subheading of the Harmonized System, a precise description of the bilateral safeguard measure including the grounds for not selecting the measure described in subparagraph 2(a) of Article 2.13, and, where applicable, the proposed date of the application, extension or modification of the bilateral safeguard measure, its expected duration and the timetable for the progressive liberalisation of the measure provided for in paragraph 4.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in Article 2.14 and notified under paragraph 1, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in Article 2.16. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

4. No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

5. No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

6. Neither Party shall apply or maintain a bilateral safeguard measure beyond the expiration of the transition period, except with the consent of the other Party.

7. Upon the termination of a bilateral safeguard measure, the rate of customs duty for an originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

8. The Parties shall review the provisions of this Section, if necessary, in the tenth year following the date of entry into force of this Agreement.

9. A written notice referred to in paragraphs 1 and 2 and any other communication between the Parties pursuant to this Section shall be done in the English or Japanese language.

Article 2.16
Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties which are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

2. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 3 of Article 2.15, the Party against whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

3. The Party exercising the right of suspension provided for in paragraph 2 shall notify the other Party, in writing, at least 30 days before suspending the application of concessions.

Article 2.17
Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b) of Article 2.13, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4 have caused or are threatening to cause serious injury to a domestic industry.

2. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 2.14 and 2.15 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 4 of Article 2.15.

4. Paragraph 7 of Article 2.15 shall be applied *mutatis mutandis* to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 2.14 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 2.18
Special Safeguard Measures on Specific Agricultural Goods

1. A Party may apply a special safeguard measure on specific originating agricultural goods classified under the tariff lines indicated with "PS*" or "PS**" in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), hereinafter referred to as "special safeguard measure", only under the conditions set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

2. In proposing to apply a special safeguard measure, a Party may, in lieu of paragraph 2 of Article 2.13, increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(a) the most-favoured-nation applied rate of customs duty in effect at the time the special safeguard measure is applied;

(b) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; and

(c) the Base Rate set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

3. The applied special safeguard measure shall only be maintained until the end of the year in which it has been imposed.

Note: For the purposes of this paragraph, the term "year" means the twelve-month period which starts on 1 April of that year.

4. Neither Party shall apply or maintain a special safeguard measure under this Article and at the same time apply or maintain a bilateral safeguard measure, a provisional bilateral safeguard measure, or a measure applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, on the same goods.

5. Provisions on special safeguard measures shall be subject to review in the tenth year following entry into force of this Agreement, or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access for the specific originating agricultural goods referred to in paragraph 1, through, for example, such measures as increasing the trigger level as set out in paragraph 3 of Section 1 (Notes for Schedule of Japan) of Part 3 of Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), reducing the applied customs duties on those goods, or if market conditions allow, terminating the special safeguard measure.

Article 2.19
Relation to Safeguard Measures under the WTO Agreement

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:

(a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or

(b) Article 5 of the Agreement on Agriculture.

2. A Party shall not apply a bilateral safeguard measure or a provisional bilateral safeguard measure under this Section on a good that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, nor shall a Party continue to maintain a bilateral safeguard measure or a provisional bilateral safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.

3. The period of application of a bilateral safeguard measure referred to in this Section shall not be interrupted by a Party's non-application of the bilateral safeguard measure in accordance with paragraph 2. That Party may resume the application of the bilateral safeguard measure to imports of the originating good upon the termination of the safeguard measures applied in accordance with subparagraph 1(a) or (b), up to the remaining period of the bilateral safeguard measure.

SECTION 3
OTHER PROVISIONS

Article 2.20
Reviews of Market Access and Protection of Competitiveness

1. For the purposes of Article 2.4, treatment of originating goods classified under the tariff lines indicated with "S" in Column 4 of the Schedule in Section 2 of a Party's Schedule to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), shall be subject to review by the Parties in the fifth year following the date of entry into force of this Agreement or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access conditions through, for example, such measures as faster reduction and/or elimination of custom duties, streamlining tendering processes and increasing quota quantities, as well as addressing issues related to levies.

2. The Parties shall also conduct a review if there is a significant change to the competitiveness in the Japanese market of such originating good designated in paragraph 1 as a result of preferential market access being granted by Japan to a non-Party based on an international agreement with that non-Party, with a view to providing equivalent treatment to the originating good of Australia. The Parties shall commence such a review within three months following the date of entry into force of the international agreement with the non-Party and will conduct the review with the aim of concluding it within six months following the same date.

Article 2.21
Sub-Committee on Trade in Goods

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues relating to the Chapter, including:

(i) promoting trade in goods between the Parties, including through consultations on further liberalisation of customs duties and accelerating tariff elimination under this Agreement;

(ii) addressing tariff and non-tariff measures to trade in goods between the Parties; and

(iii) addressing issues relating to each Party's administration of its tariff rate quotas, including to promote transparency in its administration;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions which may be delegated by the Joint Committee.

3. The Sub-Committee shall review non-tariff measures, raised by either Party for the purposes of considering approaches that may facilitate trade between the Parties. The Sub-Committee shall, if necessary, report the findings through such a review to the Joint Committee.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

Article 2.22
Amendment of Annex 1

1. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments relating to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) which are made to give effect to amendments of the Harmonized System and which include no change to the rates of customs duty to be applied to the originating goods of the other Party in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) may be made by diplomatic notes exchanged between the Governments of the Parties.

2. Any amendment pursuant to paragraph 1 shall enter into force on the date to be agreed by the Parties.

Article 2.23
Operational Procedures

On the date of entry into force of this Agreement, the Joint Committee shall adopt Operational Procedures that provide detailed regulations pursuant to which the customs administrations, the competent governmental authorities and other authorised bodies of the Parties implement their functions in relation to the application of tariff rate quotas and other relevant issues.

CHAPTER 3
RULES OF ORIGIN

Article 3.1
Definitions

For the purposes of this Chapter:

(a) the term "authorised body" means a competent governmental authority or other entity that is responsible for the issuing of a Certificate of Origin referred to in paragraph 1 of Article 3.15;

Note: In the case of Japan:

(i) the authorised body is the Ministry of Economy, Trade and Industry, or its successor; and

(ii) the Ministry of Economy, Trade and Industry, as the authorised body of Japan, may designate other certification bodies for the issuing of a Certificate of Origin referred to in paragraph 1 of Article 3.15 (hereinafter referred to as "other certification bodies").

(b) the term "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels which:

(i) are registered in the Party;

(ii) sail under the flag of the Party; and

(iii) meet one of the following conditions:

(A) they are at least 50 per cent owned by the nationals of the Parties;

(B) they are owned by a juridical person which has its head office and its principal place of business in the Party; or

(C) they are authorised by the Government of the Party to operate under a bare boat charter contract only in the Area of the Party;

(c) the term "fungible goods" or "fungible materials" respectively means goods or materials that are interchangeable as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(d) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(e) the term "importer" means a person who imports a good into the importing Party;

(f) the term "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(i) fuel and energy;

(ii) tools, dies and moulds;

(iii) spare parts and goods used in the maintenance of equipment and buildings;

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

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

(vi) equipment, devices and supplies used for testing or inspection;

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(g) the term "material" means a good that is used in the production of another good;

(h) the term "originating material" means a material that qualifies as originating in accordance with the provisions of this Chapter;

(i) the term "packing materials and containers for transportation and shipment" means goods that are used to protect a good during transportation, other than packing materials and containers for retail sale referred to in Article 3.13;

(j) the term "preferential tariff treatment" means the application of customs duties to originating goods in accordance with paragraph 1 of Article 2.4 (Trade in Goods - Elimination or Reduction of Customs Duties); and

(k) the term "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 3.2
Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

(a) is wholly obtained in the Party, as provided for in Article 3.3;

(b) is produced entirely in the Party exclusively from originating materials of the Party;

(c) satisfies the requirements of Article 3.4 as a result of processes performed entirely in one or both Parties by one or more producers, and the last process of production of the good, other than the operations provided for in Article 3.7, was performed in the exporting Party; or

(d) otherwise qualifies as an originating good under this Chapter,

and meets all other applicable requirements of this Chapter.

Article 3.3
Wholly Obtained Goods

For the purposes of subparagraph (a) of Article 3.2, the following goods shall be considered as being wholly obtained in a Party:

(a) live animals born and raised in the Area of the Party, excluding the sea outside the territorial sea of the Party;

(b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of the Party, excluding the sea outside the territorial sea of the Party;

(c) goods obtained from live animals in the Area of the Party;

(d) plants, fungi and algae, harvested, picked or gathered in the Area of the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from the Area of the Party, excluding the seabed or subsoil beneath the seabed outside the territorial sea of the Party;

(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial sea of the Parties;

(g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f);

(h) goods taken by the Party or a person of the Party from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil in accordance with international law;

(i) articles collected in the Party which can no longer perform their original purpose nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of raw materials;

(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;

(k) raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and

(l) goods obtained or produced in the Area of the Party exclusively from the goods referred to in subparagraphs (a) through (k).

Article 3.4
Goods Produced Using Non-originating Materials

1. For the purposes of subparagraph (c) of Article 3.2, a good shall qualify as an originating good of a Party if it satisfies the applicable product specific rule set out in Annex 2 (Product Specific Rules).

2. For the purposes of paragraph 1, the rule requiring that the materials used have undergone a change in tariff classification or a specific manufacturing or processing operation, shall apply only to non-originating materials.

3. A good that does not undergo the required change in tariff classification or a specific manufacturing or processing operation shall be considered as an originating good of a Party if:

(a) in the case of a good other than those specified in subparagraph (b), the total value of non-originating materials used in the production of the good that have not undergone the required change in tariff classification or a specific manufacturing or processing operation does not exceed 10 per cent of the F.O.B.; or

(b) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required change in tariff classification does not exceed 10 per cent of the total weight of the good,

provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

4. Paragraph 3 shall not apply to a good provided for in Chapters 1 through 24 of the Harmonized System, except where the non-originating material used in the production of the good is provided for in a different subheading than the good for which origin is being determined under this Article.

5. The value of non-originating materials referred to in paragraph 3 shall, however, be included in calculating the value of non-originating materials used in the production of the good.

Article 3.5
Calculation of Qualifying Value Content

1. For the purposes of paragraph 1 of Article 3.4, the product specific rules set out in Annex 2 (Product Specific Rules) using the value-added method require that the qualifying value content of a good, calculated in accordance with paragraph 2, is not less than the percentage specified by the rule for the good.

2. For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 3, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

3. F.O.B. referred to in paragraph 2 shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good or determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

4. For the purposes of paragraph 2, the value of a non-originating material used in the production of a good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

5. For the purposes of paragraph 2, the value of non-originating materials of a good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

6. For the purposes of paragraph 2, the value of non-originating material produced in either Party may be limited to the value of materials contained therein that are not otherwise qualified as originating materials of either Party.

7. Paragraphs 5 and 6 may apply in calculating the value of any materials contained in a good as long as the documentary evidence of the value referred to therein is available.

8. For the purposes of subparagraph 3(b) or 4(a), in determining the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic acquisition of the good or the non-originating material including domestic transactions.

Article 3.6
Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered to be an originating material of the former Party.

Article 3.7
Non-Qualifying Operations

1. A good shall not be considered to be an originating good of the exporting Party merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles;

(g) mere reclassification of goods without any physical change; or

(h) any combination of operations referred to in subparagraphs (a) through (g).

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 2 (Product Specific Rules).

Article 3.8
Consignment

A good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the Area of the exporting Party, other than repacking and relabelling for the purpose of satisfying the requirements of the importing Party, splitting up of the consignment, unloading, reloading, storing or any other operation necessary to preserve it in good condition or to transport the good to the importing Party during its transhipment and temporary storage; or

(b) does not remain under customs control of one or more non-Parties while it is in those non-Parties.

Article 3.9
Unassembled or Disassembled Goods

1. Where a good satisfies the requirements of the relevant provisions of Articles 3.2 through 3.7 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered to be an originating good of the other Party.

2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 3.2 through 3.7 had each of the non-originating materials among the unassembled or disassembled materials been imported into the Party separately and not in an unassembled or disassembled form.

Article 3.10
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible materials consisting of originating materials of the Party and non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

2. Where fungible goods consisting of originating goods of a Party and non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

Article 3.11
Indirect Materials

Indirect materials used in the production of a good shall be treated as originating materials of the Party where the good is produced.

Article 3.12
Accessories, Spare Parts and Tools

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2 (Product Specific Rules), accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, whether or not they are separately described in the invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If a good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

3. Where accessories, spare parts or tools are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of origin determination.

Article 3.13
Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall be disregarded in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with the good, shall be disregarded in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements set out in Annex 2(Product Specific Rules).

3. If a good is subject to a qualifying value content requirement, the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 3.14
Documentary Evidence of Origin

For the purposes of this Chapter, the following documents shall be considered to be Documentary Evidence of Origin:

(a) a Certificate of Origin referred to in Article 3.15; or

(b) an origin certification document referred to in Article 3.16.

Article 3.15
Certificate of Origin

1. A Certificate of Origin shall be issued by an authorised body or other certification bodies of the exporting Party, following a written application submitted by an exporter, by a producer or, under the exporter's or producer's responsibility, by their authorised representative located in the exporting Party.

2. The Certificate of Origin shall:

(a) specify that the goods described therein are originating goods;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be in a printed format or such other medium agreed by the Parties;

(d) contain the data elements set out in Annex 3 (Data Elements for Documentary Evidence of Origin);

(e) remain valid for one year from the date on which it was issued; and

(f) be applicable to a single importation, unless the Parties otherwise agree.

3. Where an exporter in a Party is not the producer of the good, the exporter may apply for a Certificate of Origin on the basis of:

(a) its knowledge that the good qualifies as an originating good based on the information provided by the producer;

(b) a written or electronic declaration or statement that the good qualifies as an originating good, provided by the producer; or

(c) a written or electronic declaration or statement that the good qualifies as an originating good, voluntarily provided by the producer of the good directly to the authorised body or other certification bodies of the exporting Party on request of the exporter.

4. Each Party shall provide that its authorised bodies or other certification bodies carry out proper examination of each application for a Certificate of Origin to ensure that:

(a) goods described therein are originating goods; and

(b) the data to be contained in the Certificate of Origin corresponds to that in supporting documents submitted.

5. A Certificate of Origin which is submitted to the customs administration of the importing Party after its expiration date may be accepted, in accordance with the laws and regulations or administrative procedures of the importing Party, when failure to observe the time-limit is due to *force majeure* or other valid causes beyond the control of the exporter, producer or importer.

6. On entry into force of this Agreement, each Party shall provide the other Party with a sample format of a Certificate of Origin, the names, addresses, specimen signatures of representatives, and impressions of the stamps or official seals and other details of its authorised bodies or other certification bodies that the Parties may agree. Any subsequent change shall be promptly notified.

Article 3.16
Origin Certification Document

1. An origin certification document referred to in subparagraph (b) of Article 3.14 may be completed, in accordance with this Article, by an importer, by an exporter, or by a producer of the good on the basis of:

(a) the importer's, exporter's or producer's information demonstrating that the good is an originating good;

(b) in the case of an origin certification document completed by an importer, reasonable reliance on the exporter's or, if the exporter is not a producer of the good, producer's written or electronic declaration or statement that the good is an originating good; or

(c) in the case of an origin certification document completed by an exporter, reasonable reliance on, if the exporter is not the producer of the good, the producer's written or electronic declaration or statement that the good is an originating good.

2. An origin certification document shall:

(a) specify that the goods described therein are originating goods;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be in a print format or an electronic format;

(d) contain the data elements set out in Annex 3 (Data Elements for Documentary Evidence of Origin);

(e) remain valid for one year from the date on which it was completed; and

(f) be applicable to a single importation, unless the Parties otherwise agree.

3. An origin certification document which is submitted to the customs administration of the importing Party after its expiration date may be accepted, in accordance with the laws and regulations or administrative procedures of the importing Party, when failure to observe the time-limit is due to *force majeure* or other valid causes beyond the control of the exporter, producer or importer.

4. On entry into force of this Agreement, each Party shall provide the other Party with a sample format of an origin certification document. Any subsequent change shall be promptly notified.

Article 3.17
Claim for Preferential Tariff Treatment

1. A claim for preferential tariff treatment shall be supported by Documentary Evidence of Origin.

2. Unless otherwise provided for in this Chapter, the importing Party shall grant preferential tariff treatment to a good imported from the exporting Party, provided that:

(a) the importer requests preferential tariff treatment at the time of importation;

(b) the good qualifies as an originating good of the exporting Party; and

(c) the importer provides, on request of the customs administration of the importing Party, Documentary Evidence of Origin and, where appropriate, other evidence that the good qualifies as an originating good, in accordance with the laws and regulations of the importing Party.

Note 1: Without prejudice to the authority of the customs administration of the importing Party to require the importer to provide the original of the Certificate of Origin, for the purposes of claiming preferential tariff treatment, the importer may present a copy of the Certificate of Origin on request of the customs administration of the importing Party, provided that the original of the Certificate of Origin is in possession of the importer.

Note 2: Without prejudice to the authority of the customs administration of the importing Party to require the importer to provide the original of the origin certification document, for the purposes of claiming preferential tariff treatment, the importer may present a copy of the origin certification document on request of the customs administration of the importing Party.

3. An importer should promptly make a corrected customs import declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that the Documentary Evidence of Origin on which a claim was based contains information that is not correct.

4. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers that claim preferential tariff treatment for the good to submit evidence that the good meets the requirements for an originating good specified in Article 3.8 in accordance with the applicable laws and regulations of the importing Party.

5. Each Party shall provide that the importer may, in accordance with the laws and regulations of the importing Party, apply for:

(a) in the case of Australia, where the importer does not claim preferential tariff treatment at the time of importation of the good, a refund of any excess customs duties paid as a result of the good not having been granted preferential tariff treatment, provided that the requirements in subparagraphs 2(b) and (c) are met; or

(b) in the case of Japan, where the importer does not have Documentary Evidence of Origin in its possession at the time of importation of an originating good, the temporary deferment of the presentation of Documentary Evidence of Origin by paying the deposit for preferential tariff treatment, which will be released upon the presentation of Documentary Evidence of Origin to the customs administration of the importing Party.

Article 3.18
Waiver of Documentary Evidence of Origin

Each Party shall provide that Documentary Evidence of Origin shall not be required for:

(a) an importation of a good whose customs value does not exceed, in the case of Australia, 1,000 Australian Dollars or, in the case of Japan, 100,000 Yen, or such amount as each Party may establish; or

(b) an importation of a good for which the importing Party has waived the requirement for Documentary Evidence of Origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the Documentary Evidence of Origin requirements of Articles 3.15, 3.16 and 3.17.

Article 3.19
Measures Regarding an Erroneous or False Documentary Evidence of Origin

Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate measures to prevent an erroneous or false Documentary Evidence of Origin from being used or circulated.

Article 3.20
Record-Keeping Requirements

1. Each Party shall provide that:

(a) an exporter or a producer that has been issued a Certificate of Origin or completed an origin certification document or provided a written or electronic declaration or statement referred to in subparagraph 3(b) or (c) of Article 3.15 or in subparagraph 1(b) or (c) of Article 3.16, shall maintain, for five years, in accordance with relevant laws and regulations of the exporting Party, all records necessary to demonstrate that the good for which the Documentary Evidence of Origin was issued or completed was an originating good;

(b) an importer claiming preferential tariff treatment:

(i) that is supported by a Certificate of Origin or an origin certification document completed by an exporter or a producer, shall maintain, for a period required under relevant laws and regulations of the importing Party, such documentation, including an original or copy of the Certificate of Origin or an original or copy of the origin certification document, as the importing Party may require relating to the importation of the good; or

(ii) that is supported by an origin certification document completed by the importer, shall maintain, for a period required under relevant laws and regulations of the importing Party, such documentation, including an original or copy of the origin certification document and all other records necessary to demonstrate that the good for which the origin certification document was completed was an originating good, as the importing Party may require relating to the importation of the good; and

(c) an authorised body or other certification bodies of the exporting Party shall maintain, for five years, in accordance with relevant laws, regulations or accreditation requirements of the exporting Party, all relevant documents pertaining to a Certificate of Origin.

2. The records to be kept in accordance with this Article may include electronic records.

Article 3.21
Origin Verification

1. In order to ensure the proper application of this Chapter, the Parties shall, subject to available resources, assist each other to carry out verification of the information related to Documentary Evidence of Origin, in accordance with this Agreement and their respective laws and regulations.

2. For the purposes of determining whether a good imported into one Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

(a) written requests for information from the importer;

(b) written requests to the authorised body or customs administration of the exporting Party to verify the validity of Documentary Evidence of Origin subject to available resources of the exporting Party;

(c) written requests for information from the exporter or producer referred to in subparagraph 1(a) of Article 3.20 in the exporting Party; or

(d) verification visits to the premises of the exporter or producer referred to in subparagraph 1(a) of Article 3.20 in the exporting Party in accordance with Article 3.22.

3. For the purposes of subparagraphs 2(b) and (c), the customs administration of the importing Party shall allow the exporter, producer, authorised body or customs administration of the exporting Party a period of 45 days from the date of receipt of the written request to respond or any other time period agreed upon by the Parties.

4. The customs administration of the importing Party shall endeavour to complete any action under paragraph 2 to verify eligibility for preferential tariff treatment within six months. Upon the completion of the action under paragraph 2, the customs administration of the importing Party shall provide written notification of its decision as well as the legal basis and findings of fact on which the decision was made to:

(a) where a written request for information under subparagraph 2(a), (b) or (c) was made, the importer, exporter, producer, authorised body or customs administration of the exporting Party who was requested to provide information; and

(b) where a verification visit under subparagraph 2(d) was undertaken, the exporting Party and the exporter and the producer whose premises were visited.

Article 3.22
Verification Visit

1. A verification visit referred to in subparagraph 2(d) of Article 3.21 shall be conducted under the conditions set out by the exporting Party.

2. Prior to the verification visit referred to in paragraph 1:

(a) the importing Party shall provide a request to the exporting Party in writing on the verification visit to the premises of the exporter or producer at least 40 days in advance of the proposed date of the visit; and

(b) the exporting Party shall respond to the importing Party in writing on whether the requested verification visit is accepted or refused, within 30 days from the receipt by the exporting Party of the request referred to in subparagraph (a). The exporting Party shall request the written consent of the exporter or producer whose premises are to be visited.

3. The written request referred to in subparagraph 2(a) shall include:

(a) the identity of the customs administration issuing the request;

(b) the name of the exporter or producer to whom the request is addressed;

(c) the date on which the written request is made;

(d) the proposed date and place of the visit;

(e) the objective and scope of the requested visit, including specific reference to the good subject to verification referred to in the Documentary Evidence of Origin; and

(f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

Article 3.23
Denial of Preferential Tariff Treatment

1. The importing Party may deny a claim for preferential tariff treatment where:

(a) the good does not meet the requirements of this Chapter;

(b) the exporter, producer or importer of the good fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment;

(c) the exporting Party fails to respond to the importing Party in writing on the requested verification visit in accordance with subparagraph 2(b) of Article 3.22, or provides a written response indicating that the requested verification visit has been refused;

(d) in the case that a claim for preferential tariff treatment is supported by a Certificate of Origin or by an origin certification document completed by an exporter or producer, the importer and, either one of the exporter, producer or authorised body of the exporting Party fails to provide sufficient information requested by the customs administration of the importing Party in accordance with Article 3.21 which demonstrates that the good is an originating good; or

(e) in the case that a claim for preferential tariff treatment is supported by an origin certification document completed by the importer, the information provided to the customs administration of the importing Party in accordance with subparagraph 2(a) of Article 3.21 is not sufficient to prove that the good qualifies as an originating good.

2. The importing Party may suspend or deny the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 3.21 for the duration of that action. However, the suspension of preferential tariff treatment shall not be a reason to stop the release of the good, provided any applicable deposit, fees, charges or duties are paid.

3. The importing Party may suspend or deny the application of preferential tariff treatment on any subsequent import of a good where the relevant authority had already determined that an identical good from the same producer was not eligible for such treatment, until it is demonstrated that the good complies with the provisions under this Chapter.

Article 3.24
Non-Party Invoices

The customs administration of the importing Party shall not reject Documentary Evidence of Origin only for the reason that the invoice was issued in a non-Party.

Article 3.25
Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the customs administration of the importing Party pursuant to this Chapter:

(a) may only be used by such authority for the purposes of this Chapter; and

(b) shall not be used by the importing Party for presentation in criminal proceedings carried out by a court or a judge, unless such information was provided for use in criminal proceedings on request of the importing Party, through diplomatic channels or other channels established in accordance with the laws and regulations of the exporting Party.

3. This Article shall not preclude the use or disclosure of information to the extent such use or disclosure is required by the laws and regulations of the importing Party receiving the information. The importing Party shall, wherever possible, give advance notice of any such disclosure to the exporting Party.

Article 3.26
Penalties

Each Party shall adopt or maintain appropriate penalties or other measures against violations of its laws and regulations relating to the provisions of this Chapter.

Article 3.27
Transitional Provisions for Goods in Transport or Storage

1. Within four months after the date of entry into force of this Agreement, or such longer period as allowed by the importing Party, the customs administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement:

(a) is in the process of being transported from the exporting Party to the importing Party; or

(b) has not been released from customs control, including from temporary storage in a warehouse regulated by the customs administration of the importing Party.

2. For the purpose of paragraph 1, the provisions of Article 3.17 shall apply, and for the purpose of this Article, a Certificate of Origin may be issued retrospectively.

Article 3.28
Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 (Product Specific Rules) including amendments to reflect periodic amendments to the Harmonized System, and to Annex 3 (Data Elements for Documentary Evidence of Origin), proposed by either Party; and

(iii) Chapter 2 of the Implementing Agreement referred to in Article 1.12 (General Provisions - Implementing Agreement);

(b) considering any other matter as the Parties may agree related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall commence a review of this Chapter, within one year following entry into force of this Agreement. This review will focus on improvements to the origin certification system. The review will also give consideration to the inclusion of additional product specific rules relating to specific manufacturing or processing operations and to extending applicable rules to goods exempted from their application at entry into force of this Agreement. The Sub-Committee will ensure that the rules as set out in subsequent agreements to which both Parties are party are, as appropriate and at the agreement of Parties, incorporated into this Agreement.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

Article 3.29
Amendments to Annexes 2 and 3

1. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments relating to:

(a) Annex 2 (Product Specific Rules); or

(b) Annex 3 (Data Elements for Documentary Evidence of Origin),

may be made by diplomatic notes exchanged between the Governments of the Parties.

2. Any amendment pursuant to paragraph 1 shall enter into force on the date to be agreed by the Parties.

CHAPTER 4
CUSTOMS PROCEDURES

Article 4.1
Scope

This Chapter shall apply to customs procedures applied to goods traded between the Parties and shall be implemented by the Parties in accordance with the laws and regulations of each Party.

Article 4.2
Definitions

For the purposes of this Chapter, the term "customs laws" means such laws and regulations administered and enforced by the customs administration of each Party concerning the importation, exportation and transit 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 goods across the boundary of the customs territory of each Party.

Article 4.3
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person either in print or through the Internet.

2. When information that has been made available must be revised due to changes in a Party's customs laws, that Party shall make the revised information readily available, sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. On request of any interested person of the Parties, a Party shall provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws, and any other pertinent information of which it considers the interested person should be made aware.

4. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested person of the Parties concerning customs matters and shall make publicly available, including through the Internet, the names, addresses and telephone numbers of such enquiry points.

Article 4.4
Customs Clearance

1. The Parties shall apply their respective customs procedures in a predictable, consistent, transparent, impartial and reasonable manner.

2. For prompt customs clearance of goods traded between the Parties, each Party shall:

(a) make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

(d) promote cooperation, where appropriate, between its customs administration and:

(i) other national authorities of the Party;

(ii) the trading communities of the Party; and

(iii) the customs administrations of non-Parties.

3. Each Party shall periodically review its customs procedures with a view to exploring ways of further facilitating legitimate trade flows between the Parties while ensuring effective enforcement of its customs laws.

Article 4.5
Advance Rulings

1. The importing Party shall provide for advance rulings that are issued, prior to the importation of a good of the exporting Party, to importers of the good or their authorised agents, or exporters or producers of the good in the exporting Party or their authorised agents, concerning the tariff classification, customs valuation and origin of the good, as well as the qualification of the good as an originating good of the exporting Party under the provisions of Chapter 3 (Rules of Origin).

2. Where a written application is made with all the necessary information and the importing Party has no reasonable grounds to deny issuance, the importing Party shall endeavour to issue such a written advance ruling as referred to in paragraph 1. The importing Party shall adopt or maintain procedures for issuing advance rulings which satisfy the requirements specified in the Implementing Agreement.

3. The advance ruling issued in accordance with paragraph 2 shall remain valid for the period determined by the importing Party, in accordance with its laws, regulations and procedures.

4. The importing Party may modify or revoke the advance ruling issued in accordance with paragraph 2 in such cases as are specified in the Implementing Agreement.

5. The importing Party shall, where appropriate, make publicly available the advance ruling issued in accordance with paragraph 2.

Article 4.6
Temporary Admission and Goods in Transit

1. Each Party shall continue to facilitate procedures for the temporary admission of goods traded between the Parties in accordance with its laws, regulations and international obligations, including those under the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on 6 December 1961, as amended.

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

3. For the purposes of this Article, the term "temporary admission" means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose and intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 4.7
Cooperation and Exchange of Information

1. The Parties shall, within the competence and available resources of their respective customs administrations, cooperate and exchange information in the field of customs procedures.

2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

Article 4.8
Review Process

Each Party shall, in relation to any decision concerning customs matters taken by the Party, provide affected parties with easily accessible processes of administrative and judicial review. Such review shall be independent from the official or office making the decision.

Article 4.9
Sub-Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) identifying areas relating to this Chapter to be improved to facilitate trade between the Parties;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

CHAPTER 5
SANITARY AND PHYTOSANITARY COOPERATION

Article 5.1
Scope

This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 5.2
Reaffirmation of Rights and Obligations

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

Article 5.3
Cooperation

1. The Parties shall give positive consideration to further cooperation through:

(a) exchanging views and information at a bilateral level and in relevant international bodies engaged in food safety and human, animal or plant life or health issues; and

(b) facilitating the timely exchange of information on their respective SPS measures.

2. Where a Party makes a notification in accordance with subparagraph 5(b) or 6(a) of Annex B to the SPS Agreement, it shall provide a copy of the notification electronically to the other Party at the same time as the notification is provided to the World Trade Organization.

Article 5.4
Sub-Committee on Sanitary and Phytosanitary Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Cooperation (hereinafter referred to in this Chapter as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) undertaking consultations, including science-based consultations, to identify and address specific issues that may arise from the application of SPS measures with the objective of achieving mutually acceptable solutions;

(c) as appropriate, reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall coordinate its activities with those of the relevant consultative fora of the Parties, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties on SPS measures.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties with responsibility for SPS measures.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

Article 5.5
Chapter Coordinator

1. For the purposes of the effective implementation and operation of this Chapter, each Party shall designate the following governmental authority as its Chapter Coordinator:

(a) for Australia, the Department of Agriculture, or its successor; and

(b) for Japan, the Ministry of Foreign Affairs, or its successor.

2. The functions of the Chapter Coordinators shall be:

(a) coordinating the work of the Sub-Committee and facilitating the implementation of this Chapter and decisions of the Sub-Committee; and

(b) answering all reasonable enquiries from the other Party regarding SPS measures and, as appropriate, providing the other Party with other relevant information.

3. The Chapter Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.

Article 5.6
Non-Application of Chapter 19 (Dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

CHAPTER 6
TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

Article 6.1
Scope

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies or to SPS measures.

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance in the implementation of the provisions of this Chapter by local government and non-governmental bodies within its Area.

Article 6.2
Definitions

For the purposes of this Chapter:

(a) the term "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement; and

(b) the definitions set out in the TBT Agreement shall apply.

Article 6.3
Reaffirmation of Rights and Obligations

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

Article 6.4
International Standards, Guides or Recommendations

1. Subject to paragraph 4 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement, each Party shall use relevant international standards, guides or recommendations, or their relevant parts, as a basis for its technical regulations and conformity assessment procedures.

2. Where a Party does not use an international standard, guide or recommendation referred to in paragraph 1, or their relevant parts, as a basis for its technical regulations or conformity assessment procedures, it shall, on request of the other Party, explain the reasons therefor.

3. The Parties shall encourage their respective standardising bodies to consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guides, recommendations or policies relevant to this Chapter.

Article 6.5
Technical Regulations

1. In accordance with paragraph 7 of Article 2 of the TBT Agreement, 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 that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons therefor.

Article 6.6
Conformity Assessment Procedures

1. In accordance with Article 6 of the TBT Agreement, each Party shall ensure, to the extent possible, that results of conformity assessment procedures conducted in the Area of the other Party are accepted.

2. Each Party recognises that a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the Area of the other Party. Each Party shall, on request of the other Party, provide information on the range of such mechanisms used with a view to facilitating acceptance of conformity assessment results.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the Area of the other Party as referred to in paragraph 1, it shall, on request of the other Party, explain the reasons therefor.

4. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its Area and refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the Area of the other Party, it shall, on request of the other Party, explain the reasons therefor.

5. Further to paragraph 3 of Article 6 of the TBT Agreement, where a Party declines a request from the other Party to engage in negotiations to conclude an agreement or arrangement on facilitating recognition in the Area of the Party of the results of conformity assessment procedures conducted by the conformity assessment bodies in the Area of the other Party, it shall, on request of the other Party, explain the reasons therefor.

Article 6.7
Transparency

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures, subject to its laws and regulations or administrative arrangements, on terms no less favourable than those accorded to its own persons.

2. As applicable, each Party shall recommend that non-governmental bodies in its Area observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. Where a Party makes a notification in accordance with paragraph 9.2 or 10.1 of Article 2, or paragraph 6.2 or 7.1 of Article 5, of the TBT Agreement, it shall provide immediately a copy of the notification to the other Party electronically through the enquiry point the Party has established in accordance with Article 10 of the TBT Agreement. On request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a technical regulation, standard or conformity assessment procedure that the Party has adopted or is proposing to adopt.

Article 6.8
Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Chapter as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) exchanging information on technical regulations, standards and conformity assessment procedures;

(b) reviewing and monitoring the implementation and operation of this Chapter;

(c) undertaking consultation on issues related to technical regulations, standards and conformity assessment procedures, including, if the Parties so decide, by establishing *ad hoc* working groups;

(d) discussing any issues related to this Chapter;

(e) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

5. Where a Party declines a request from the other Party to consult on an issue relevant to this Chapter, it shall, on request of the other Party, explain the reasons therefor.

Article 6.9
Chapter Coordinator

1. For the purposes of the effective implementation and operation of this Chapter, each Party shall designate the following governmental authority as its Chapter Coordinator:

(a) for Australia, the Department of Industry, or its successor; and

(b) for Japan, the Ministry of Foreign Affairs, or its successor.

2. The functions of the Chapter Coordinators shall be:

(a) coordinating the work of the Sub-Committee and facilitating the implementation of this Chapter and the decisions of the Sub-Committee; and

(b) answering all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures and, as appropriate, providing the other Party with other relevant information.

3. The Chapter Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.

Article 6.10
Information Exchange

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

Article 6.11
Non-Application of Chapter 19 (Dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

CHAPTER 7
FOOD SUPPLY

Article 7.1
Basic Principle

The Parties recognise the importance of strengthening their stable relationship in trade in food.

Article 7.2
Definitions

For the purposes of this Chapter, the term "essential food" means any good listed in Annex 4 (List of Essential Food).

Article 7.3
Export Restrictions on Essential Food

1. Each Party shall endeavour not to introduce or maintain any prohibitions or restrictions on the exportation or sale for export of any essential food to the other Party as set out in paragraph 2(a) of Article XI of the GATT 1994.

2. Where a Party intends to adopt an export prohibition or restriction on an essential food to the other Party in accordance with paragraph 2(a) of Article XI of the GATT 1994, it shall:

(a) seek to limit such prohibition or restriction to the extent necessary, giving due consideration to its possible negative effects on the other Party's food security;

(b) before adopting such a prohibition or restriction, provide notice in writing, as far in advance as practicable, to the other Party of such prohibition or restriction and its reasons, together with its nature and expected duration; and

(c) on request, provide the other Party with reasonable opportunity for consultation with respect to any matter related to such prohibition or restriction with a view to minimising the negative effects on the other Party's food security.

3. The Parties shall review this Article with a view to considering the approach on avoiding the introduction or maintenance of any prohibition or restriction on the exportation or sale for export of essential food ten years after the date of entry into force of this Agreement, unless the Parties otherwise agree.

Article 7.4
Promotion and Facilitation of Investment

In order to promote investment in the food sector, each Party shall designate a contact point to respond to all enquiries from interested parties in the other Party regarding investment in the food sector and, if appropriate, to provide the relevant information.

Article 7.5
Consultations for Supply of Essential Food

1. Each Party shall designate a contact point for each essential food for prompt communication.

2. Each Party shall promptly notify the other Party when a significant decrease in the export volume of any essential food is foreseen.

3. The Parties shall enter into consultations with respect to the matters specified in paragraph 2 with a view to supporting stable trade in essential food. Such consultations shall be held by representatives of the Governments of the Parties, and the Governments of the Parties may invite representatives of other public and private entities with necessary expertise relevant to the issues to be discussed.

CHAPTER 8
ENERGY AND MINERAL RESOURCES

Article 8.1
Basic Principle

The Parties recognise the importance of strengthening their stable and mutually beneficial relationship in the energy and mineral resources sector.

Article 8.2
Definitions

For the purposes of this Chapter:

(a) the term "energy and mineral resource good" means any good listed in Annex 5 (List of Energy and Mineral Resource Goods);

(b) the term "energy and mineral resource regulatory body" means any body responsible for the regulation of energy and mineral resources;

(c) the term "energy and mineral resource regulatory measure" means any measure by one or more energy and mineral resource regulatory body that directly affects the exploration, extraction, processing, production, transportation, distribution or sale of an energy and mineral resource good; and

(d) the term "export licensing procedures" means administrative procedures, whether or not referred to as "licensing", used by a Party for the operation of export licensing regimes requiring the submission of an application or other documentation, other than that required for customs clearance purposes, to the relevant administrative body, as a prior condition for exportation from that Party.

Article 8.3
Stable Supply of Energy and Mineral Resources

1. Recognising the importance of a stable supply of energy and mineral resource goods and the role that trade, investment and cooperation (including on infrastructure development) play in achieving long term security, each Party shall take reasonable measures as may be available to it for that purpose.

2. Without prejudice to Article 19.4 (Dispute Settlement – Consultations), if there arises a severe and sustained disruption to supply of an energy and mineral resource good or threat thereof, a Party may request consultations with the other Party. When such a request is made, the other Party shall reply promptly to the request and enter into consultations to discuss the matter within a reasonable period of time after the date of receipt of that request. The Parties shall explore and endeavour to take any appropriate actions available to them that would contribute to the resolution of the disruption or threat thereof described above.

Article 8.4
Export Restrictions

1. Each Party shall endeavour not to introduce or maintain any prohibitions or restrictions on the exportation or sale for export of any energy and mineral resource goods as set out in paragraph 2(a) of Article XI, or taken consistently with Article XX(g), of the GATT 1994.

2. Where a Party intends to adopt an export prohibition or restriction on an energy and mineral resource good in accordance with paragraph 2(a) of Article XI or Article XX(g) of the GATT 1994, the Party shall:

(a) seek to limit such prohibition or restriction to the extent necessary, giving due consideration to its possible negative effects on the other Party's energy and mineral resources security;

(b) provide notice in writing, as far in advance as practicable, to the other Party of such prohibition or restriction and its reasons together with its nature and expected duration; and

(c) on request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such prohibition or restriction.

Note: For greater certainty, nothing in this Article shall be construed to require the Parties to take any measures inconsistent with the relevant provisions of the GATT 1994.

Article 8.5
Export Licensing Procedures and Administrations

If a Party adopts or maintains export licensing procedures with respect to an energy and mineral resource good:

(a) the implementation shall be undertaken in a transparent and predictable manner, in accordance with its laws and regulations;

(b) all information concerning procedures for the submission of applications, the administrative bodies to be approached and the lists of products subject to the licensing requirement shall be published, as soon as possible, in such a manner as to enable the other Party and traders of the other Party to become acquainted with them. Any modification to export licensing procedures or the list of products subject to export licensing shall also be published in the same manner;

(c) the Party shall provide, on request of the other Party, all relevant information concerning the administration of the restrictions in accordance with its laws and regulations;

(d) when administering quotas by means of export licensing, the Party shall inform the other Party of the overall amount of quotas to be applied and any change thereof;

(e) the Party shall hold consultations on request of the other Party, on the rules for such procedures with the other Party; and

(f) if a licence application is not approved, an applicant of the other Party shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the legislation or procedures of the Party to which the licence application is submitted.

Article 8.6
Energy and Mineral Resource Regulatory Measures

1. In the introduction of any energy and mineral resource regulatory measure of general application after the date of entry into force of this Agreement, a Party shall take into consideration the impact on commercial activities and implement such measure in an orderly and equitable manner in accordance with its laws and regulations.

2. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any new energy and mineral resource regulatory measure of general application.

3. In cases where a Party adopts any new energy and mineral resource regulatory measure of general application that might materially affect the operation of this Chapter or otherwise substantially affect the other Party's interests under this Chapter, the Party shall notify the other Party of such measure prior to the implementation of such measure, or as soon as possible thereafter.

4. Where a Party adopts any new energy and mineral resource regulatory measure under paragraph 3, it shall, on request of the other Party, hold consultations with the other Party. Each Party shall accord due consideration to views presented by the other Party in the course of such consultations.

Article 8.7
Cooperation

The Parties shall, in accordance with their respective laws and regulations and subject to their available resources, promote cooperation for strengthening stable and mutually beneficial relationships in the energy and mineral resources sector.

Article 8.8
Sub-Committee on Energy and Mineral Resources

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Energy and Mineral Resources (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) exchanging information on any matters related to this Chapter;

(c) reviewing the provisions of this Chapter, taking into account developments in the energy and mineral resources sector;

(d) discussing any issues related to this Chapter, in cooperation, where appropriate, with other relevant Sub-Committees established in accordance with this Agreement;

(e) as appropriate, reporting the findings of the Sub-Committee, and making recommendations to the Joint Committee; and

(f) carry out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the private sector, or regional or local governments, with expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

CHAPTER 9
TRADE IN SERVICES

Article 9.1
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services, including measures with respect to:

(a) the supply of a service;

Note: Measures with respect to the supply of a service include those with respect to the provision of any financial security as a condition for the supply of a service.

(b) the purchase or use of, or payment for, a service;

(c) the access to services offered to the public generally and the use of them, in connection with the supply of a service; and

(d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

(a) with respect to air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

Note: The Parties note the multilateral negotiations with respect to the review of the Annex on Air Transport Services of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

(b) government procurement;

(c) subsidies provided by a Party or a state enterprise thereof including grants, government-supported loans, guarantees and insurance, except as provided for in Article 9.11;

(d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis; and

(e) services supplied in the exercise of governmental authority.

Article 9.2
Definitions

For the purposes of this Chapter:

(a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(b) the term "commercial presence" means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of an enterprise; or

(ii) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purposes of supplying a service;

(c) the term "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) the term "enterprise of the other Party" means an enterprise which is either:

(i) constituted or otherwise organised in accordance with the law of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of the other Party; or

(B) enterprises of the other Party identified under subparagraph (i);

(e) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:

(i) central, regional or local governments or authorities of a Party; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party;

(f) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

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

(h) the term "service consumer" means any person that receives or uses a service;

(i) the term "services of the other Party" means services which are supplied:

(i) from or in the Area of the other Party, or in the case of maritime transport services, by a vessel registered in accordance with the law of the other Party, or by a person of the other Party which supplies the services through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of services through commercial presence or through the presence of natural persons, by service suppliers of the other Party;

(j) the term "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(k) the term "service supplier" means any person that seeks to supply or supplies a service;

Note: Where the service is not supplied or sought to be supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

(l) the term "state enterprise" means an enterprise owned or controlled by a Party;

(m) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(n) the term "trade in services" means the supply of a service:

(i) from the Area of a Party into the Area of the other Party ("cross-border supply mode");

(ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad mode");

(iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence mode"); and

(iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and

(o) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

Article 9.3
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (n) of Article 9.2, a Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire Area, measures that are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

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

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

Note: This subparagraph shall not apply to measures of a Party which limit inputs for the supply of services.

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirements of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

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

2. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(i) of Article 9.2, where the cross-border movement of capital is an essential part of the service itself, a Party shall allow such movement of capital. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(iii) of Article 9.2, a Party shall allow related transfers of capital into its Area.

Article 9.4
National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.

Note: Nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

Article 9.5
Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

Article 9.6
Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the supply of a service.

Note: This Article shall not apply to the supply of a service described in subparagraph (n)(iii) of Article 9.2.

Article 9.7
Non-Conforming Measures

1. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to:

(a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Schedules in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10):

(i) the central government of a Party; or

(ii) a State or Territory of Australia or a prefecture of Japan;

(b) any non-conforming measure that is maintained by a local government other than a prefecture or a State or Territory referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4.

2. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10).

3. In cases where a Party makes an amendment or modification to any non-conforming measure set out in its Schedule in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) after the date of entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

(a) on request of the other Party, promptly provide information and respond to questions pertaining to any such proposed or actual amendment, modification or measure;

(b) to the extent possible, provide a reasonable opportunity for comments by the other Party on any such proposed or actual amendment, modification or measure; and

(c) to the maximum extent possible, notify the other Party of any such amendment, modification or measure that may substantially affect the other Party's interests under this Agreement.

4. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) respectively.

Article 9.8
Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. With a view to ensuring that any measure adopted or maintained by a Party relating to the authorisation, licensing or qualification of service suppliers or to the technical standards of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavour to ensure that such measure:

(a) is based on objective and transparent criteria, such as the competence and ability to supply services;

(b) is not more burdensome than necessary to ensure the quality of services; and

(c) does not constitute a disguised restriction on the supply of services.

5. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

6. Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, the Party shall:

(a) where practicable, make publicly available:

(i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

(ii) information on technical standards;

(b) where any form of authorisation is required for the supply of a service, ensure that it will:

(i) within a reasonable period of time after the submission of an application deemed complete under its laws and regulations, consider the application, make a decision as to whether or not to grant the relevant authorisation and inform the applicant of the decision;

(ii) on request of the applicant, provide without undue delay, information concerning the status of the application;

(iii) where practicable, in the case of an incomplete application, on request of an applicant, identify all the additional information that is required to complete the application;

(iv) endeavour to provide the service supplier whose application has been found to be deficient with at least one means to achieve the authorisation; and

Note: Such means to achieve authorisation may include, but are not limited to, additional experience under the supervision of a professional qualified or licensed in that Party, additional academic training or exams in a specialised field, or language exams.

(v) where a competent authority of a Party notifies an unsuccessful applicant of the administrative decision in writing, ensure that the competent authority informs the applicant of the reasons for denial of the application in writing; and

(c) provide for adequate procedures to verify the competency of professionals of the other Party.

7. A Party shall, subject to its laws and regulations, permit service suppliers of the other Party to use the enterprise names under which they trade in the Area of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

8. The Parties shall endeavour to implement the Disciplines on Domestic Regulation in the Accountancy Sector adopted under the auspices of the World Trade Organization on 14 December 1998.

9. This Article shall not apply to any measures which fall within the responsibility of non-government bodies. However, each Party shall encourage, where possible, such non-government bodies to comply with the relevant requirements of this Article.

Article 9.9
Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises the education or experience obtained, requirements met, or licences or certifications granted in any non-Party:

(a) nothing in Article 9.5 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the other Party;

(b) in cases where such recognition is accorded by an agreement or arrangement between the Party and the non-Party, the Party shall afford the other Party, on request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate one comparable with it; and

(c) in cases where such recognition is accorded unilaterally, the Party shall afford the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the other Party should also be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. Wherever appropriate, recognition provided for in paragraph 1 should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article 9.10
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with such obligations.

Note: For the purposes of this paragraph, the definition of the term "affiliated" provided for in subparagraph (n)(iii) of Article XXVIII of the GATS shall apply *mutatis mutandis*.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations in its Area.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its Area.

Article 9.11
Subsidies

1. Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS.

2. In the event that either Party considers that its interests have been adversely affected by a subsidy of the other Party, the Parties shall, on request of the former Party, enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the Party granting a subsidy shall, if it deems fit, consider a request of the other Party for information relating to the subsidy program such as:

(a) laws and regulations under which the subsidy is granted;

(b) form of the subsidy (e.g. grant, loan, tax concession);

(c) policy objective or purpose of the subsidy;

(d) dates and duration of the subsidy and any other time limits attached to it; and

(e) eligibility requirements of the subsidy.

4. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article.

Article 9.12
Payments and Transfers

1. Except under the circumstances envisaged in Article 9.13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 9.13, or on request of the International Monetary Fund.

Article 9.13
Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictive measures on trade in services, including on payments or transfers for transactions.

2. Restrictive measures referred to in paragraph 1:

(a) shall be applied such that the other Party is treated no less favourably than any non-Party;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

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

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictive measures, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictive measures shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictive measures adopted or maintained in accordance with paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party which has adopted any restrictive measures in accordance with paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictive measures adopted by it.

Article 9.14
Denial of Benefits

1. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party, and that the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party or of the denying Party and has no substantial business activities in the Area of the other Party.

Note: For the purposes of this Article, an enterprise is:

(a) "owned" by persons if more than 50 per cent of the equity interests in it is beneficially owned by such persons; and

(b) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 9.15
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) reviewing this Chapter in light of developments elsewhere;

(c) considering promotion of recognition of qualifications as outlined in Article 9.9 and Annex 8 (Recognition of Qualifications of Service Suppliers);

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) considering any other matters identified by the Parties.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

CHAPTER 10
TELECOMMUNICATIONS SERVICES

Article 10.1
Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to telecommunications services.

2. This Chapter shall apply to measures adopted or maintained by a Party affecting telecommunications services.

3. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter shall not apply to measures that a Party adopts or maintains relating to broadcasting services, including distribution of radio and television programming. This Chapter shall not apply to measures by Japan affecting telegraph services.

Note 1: For the purposes of this paragraph, the term "broadcasting services" shall include radio and television services and radio and television transmission services under the Services Sectoral Classification List (GATT Document MTN.GNS/W/120, dated 10 July 1991).

Note 2: For the purposes of this paragraph, for Japan, the term "telegraph services" means telegraph services referred to in Supplementary Provisions of Telecommunications Business Law (Law No. 86 of 1984).

4. Nothing in this Chapter shall be construed to:

(a) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcasting services referred to in paragraph 3 to make available its broadcast or cable facilities as a public telecommunications transport network.

Article 10.2
Definitions

For the purposes of this Chapter:

(a) the term "carrier pre-subscription function" means a function of enabling end users to use the carrier they have selected by pre-registration without dialling a carrier identification code;

(b) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(c) the term "dialling parity" means the ability of an end user to use an equal number of digits including through carrier pre-subscription function to access a like public telecommunications transport service designated by the Party, regardless of the public telecommunications transport service supplier chosen by such end user;

(d) the term "end user" means a final consumer of or subscriber to public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;

(e) the term "essential facilities" means facilities of a public telecommunications transport network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(f) the term "interconnection" means linking with suppliers providing public telecommunications transport networks or services in order to allow the end users of one supplier to communicate with the end users of another supplier and to access services provided by another supplier;

(g) the term "leased circuits" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;

(h) the term "major supplier" means a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

Note: For greater certainty, the term "basic telecommunications services" includes Internet access services.

(i) the term "non-discriminatory" means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

(j) the term "public telecommunications transport network" means the telecommunications infrastructure which is used to provide public telecommunications transport services between and among defined network termination points;

(k) the term "public telecommunications transport service" means any telecommunications transport service offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(l) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(m) the term "telecommunications regulatory body" means any body or bodies responsible for the regulation of telecommunications; and

(n) the term "users" means end users or suppliers of public telecommunications transport networks or services.

Article 10.3
Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion, on transparent, reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such suppliers are permitted to:

(a) purchase or lease, and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's service;

(b) provide services to individual or multiple users over any leased or owned circuits;

(c) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing, and conversion functions; and

(e) use operating protocols of the service supplier's choice in the supply of any services, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in either Party or any non-Party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the personal data of end users of public telecommunications transport networks or services, including the privacy of such users,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in Article 10.23;

(c) type approval of terminal or other equipment which interfaces with such networks and technical requirements relating to the attachment of such equipment to such networks;

(d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(e) notification, registration and licensing.

Article 10.4
Submarine Cables

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its Area, where a supplier is authorised to operate a submarine cable facility as a public telecommunications transport service.

Article 10.5
Number Portability

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area provide number portability for end users when switching suppliers of mobile services or between other like services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Article 10.6
Dialling Parity

Each Party shall ensure that:

(a) suppliers of public telecommunications transport networks or services in its Area provide dialling parity within the same category of service to suppliers of public telecommunications transport networks or services of the other Party without unreasonable dialling delays; and

(b) suppliers of public telecommunications transport networks or services of the other Party are afforded non-discriminatory allocation of telephone numbers.

Article 10.7
Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its Area, from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 shall include, in particular:

(a) engaging in anticompetitive cross-subsidisation or other anticompetitive pricing practices;

(b) using information obtained from competitors with anticompetitive results; and

(c) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 10.8
Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its Area accord suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or any non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 10.9
Resale

Each Party shall ensure that major suppliers of public telecommunications transport networks or services in its Area do not impose unreasonable or discriminatory conditions or limitations which have anticompetitive effects on the resale of such services by suppliers of public telecommunications transport networks or services of the other Party.

Article 10.10
Interconnection

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its Area provide, directly or indirectly, interconnection with the suppliers of public telecommunications transport networks or services of the other Party on commercial terms.

2. Each Party shall ensure that major suppliers in its Area provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the service supplier need not pay for network components or facilities that it does not require for the services to be provided; and

(c) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its Area pursuant to at least one of the following options:

(a) a reference interconnection offer, approved by the Party's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;

(b) a standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;

(c) the terms and conditions of an interconnection agreement; or

(d) a binding award or arbitration.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. With respect to any major supplier in its Area, each Party shall ensure that:

(a) a reference interconnection offer or other standard interconnection offer; or

(b) the terms of the major supplier's interconnection agreement,

are published or otherwise made publicly available.

Note: For Australia, this paragraph shall only apply with respect to services deemed or declared a "declared service" by Australia's telecommunications regulatory body in accordance with the laws and regulations of Australia.

6. Each Party shall maintain appropriate measures for the purpose of preventing major suppliers in its Area from using or providing to any other persons information on suppliers of public telecommunications transport networks or services or end users thereof, including commercially sensitive information, which was acquired through interconnection with public telecommunications transport networks of other such suppliers, for purposes other than such interconnection.

Note: For Japan, the major suppliers referred to in paragraphs 2, 3 and 6 are limited to those falling under subparagraph (h)(i) of Article 10.2.

Article 10.11
Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party, with respect to linking between their telecommunications facilities, access to network components or facilities for the provision of public telecommunications transport networks or services on an unbundled basis, in a timely fashion, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2.

Article 10.12
Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2.

Article 10.13
Co-Location

1. Subject to paragraph 2, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunications transport networks or services of the other Party to physically locate on the major suppliers' premises the equipment which is essential for interconnection or access to unbundled network components or facilities, where physically feasible and where no practical or viable alternatives exist, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

2. Paragraph 1 applies to the major suppliers' premises determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2.

Article 10.14
Access to Facilities

1. Each Party shall ensure, subject to its laws and regulations, reasonable, non-discriminatory and transparent treatment with regard to access to conduits, cable tunnels, poles or other facilities which can be used to establish telecommunications cables and are owned by public utilities including owners of public telecommunications transport networks, to any supplier of public telecommunications transport networks or services of the other Party, when a supplier requests such access.

2. Subject to paragraph 3, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunication transport networks or services of the other Party to access towers, conduits, cable tunnels, poles and rights of way owned or controlled by such major suppliers, where physically feasible and where no practical or viable alternative exists, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

3. Paragraph 2 applies to the towers, conduits, cable tunnels, poles and rights of way determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

4. Each Party shall ensure, to the extent provided for in its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party:

(a) can request negotiations with owners of land or structures fixed thereto (including buildings), for the right to use such land or structures for the purposes of establishing, extending and maintaining a public telecommunications transport network; and

(b) can obtain the right to use such land or structures for such purposes, on terms that are reasonable and non-discriminatory (including with respect to timeliness), if a negotiated outcome referred to in subparagraph (a) is not reached in a timely manner.

Note: For Japan, the major suppliers referred to in paragraphs 2 and 3 are limited to those falling under subparagraph (h)(i) of Article 10.2.

Article 10.15
Independent Telecommunications Regulatory Body

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of telecommunications services.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all current and prospective market participants and shall endeavour to ensure that the decisions and the procedures are made and implemented without undue delay. To this end, each Party shall ensure that any financial interest that it holds in a supplier of telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

Article 10.16
Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anticompetitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 10.17
Licensing Process

1. Where a licence is required, each Party shall make publicly available the following:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

2. Each Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for or revoke a licence, each Party shall make known to the applicant, on request, the reasons for the denial or revocation.

Article 10.18
Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. The Parties recognise that each Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 9.3 (Trade in Services - Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications transport services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest.

Article 10.19
Transparency

1. Each Party shall endeavour to ensure that:

(a) telecommunications service suppliers are provided with adequate advance notice of, and opportunity to comment on, any regulatory decision of general application that its telecommunications regulatory body proposes; and

(b) suppliers of public telecommunications transport networks or services of the other Party are, on request, provided with a clear and detailed explanation of reasons for any decision to deny access of the kind specified in Articles 10.10, 10.13 and 10.14, where that decision is made, approved, endorsed or authorised by the Party.

2. Each Party shall ensure that its measures relating to public telecommunications transport networks or services are published or otherwise made publicly available, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with such networks and services;

(c) bodies responsible for the preparation and adoption of standards affecting access to and use of public telecommunications transport networks and services;

(d) conditions applying to attachment of terminal or other equipment; and

(e) notifications, registration, or licensing requirements, if any.

Article 10.20
Unsolicited Electronic Messages

1. Each Party shall, in accordance with its laws and regulations, take appropriate and necessary measures to regulate unsolicited electronic messages, with a view to encouraging favourable conditions for the use of electronic messages, and thus contributing to the sound development of an advanced information and communication society. For these purposes, the Parties shall cooperate bilaterally and in international fora.

2. For the purposes of paragraph 1, bilateral cooperation includes, where appropriate, the exchange of information and other assistance concerning the regulation of unsolicited electronic messages, subject to the laws and regulations of each Party.

Article 10.21
Resolution of Telecommunications Disputes

Further to Articles 1.5 (General Provisions - Administrative Proceedings) and 1.6 (General Provisions - Review and Appeal), each Party shall ensure that:

(a) suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to the obligations set out in Articles 10.3 through 10.14;

(b) a supplier of public telecommunications transport networks or services of the other Party that has requested interconnection with a major supplier in the Party's Area may have recourse to its telecommunications regulatory body, within a reasonable period after the supplier requests interconnection, concerning disputes regarding the terms, conditions and rates for interconnection with such major supplier; and

(c) any enterprise that is aggrieved by the determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority. Neither Party shall permit such judicial review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends, repeals or stays such determination or decision.

Article 10.22
Sub-Committee on Telecommunications

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Telecommunications (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter and other issues relevant to the telecommunications sectors agreed on by the Parties;

(c) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the private sector, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

Article 10.23
Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International Telecommunication Union and the International Organization for Standardization.

CHAPTER 11
FINANCIAL SERVICES

Article 11.1
Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to financial services.

2. This Chapter shall apply to measures adopted or maintained by a Party affecting the supply of a financial service. Reference to the supply of a financial service in this Chapter shall mean the supply of a service defined in subparagraph (n) of Article 9.2 (Trade in Services - Definitions).

Article 11.2
Definitions

1. For the purposes of this Chapter:

(a) the term "financial service" means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the activities stated in Annex 9 (Financial Services);

(b) the term "financial service supplier" means any person that seeks to supply or supplies a financial service but does not include a public entity;

(c) the term "new financial service" means any service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in a Party but which is supplied in the other Party;

(d) the term "public entity" means:

(i) the Government, central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(e) the term "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or any other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers.

2. For the purposes of subparagraph 2(e) of Article 9.1 (Trade in Services - Scope), the term "services supplied in the exercise of governmental authority" means, in respect of a financial service:

(a) activities conducted by the central bank or monetary authority of a Party or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

3. For the purposes of subparagraph 2(e) of Article 9.1 (Trade in Services - Scope), if a Party allows any of the activities referred to in subparagraphs 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services supplied in the exercise of governmental authority" shall exclude such activities.

4. Subparagraph (j) of Article 9.2 (Trade in Services - Definitions) shall not apply to the services covered by this Chapter.

Article 11.3
New Financial Services

Each Party shall permit financial service suppliers of the other Party established in the former Party to offer in the former Party any new financial service that a Party would permit its own financial service suppliers to offer, in like circumstances.

Article 11.4
Domestic Regulation

Nothing in this Agreement shall prevent a Party from adopting or maintaining measures relating to financial services or the financial system for prudential reasons including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

Article 11.5
Recognition

1. A Party may recognise prudential measures of any international regulatory body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body or non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 11.6
Transfers of Information and Processing of Information

Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Chapter and Chapters 9 (Trade in Services) and 14 (Investment).

Article 11.7
Regulatory Transparency

1. Each Party, recognising the importance of transparent regulations and policies governing the activities of financial service suppliers in facilitating their ability to gain access to and operate in each other's market, shall promote regulatory transparency in financial services.

2. To the extent possible, each Party shall allow a reasonable period of time between the publication of final regulations and their effective date.

3. To the extent possible, each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions and substantive comments from, and provide information to, the other Party on any measures of general application it proposes to adopt with respect to any matter covered by this Chapter.

4. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made publicly available in such a manner as to enable interested persons of the other Party to become acquainted with them.

5. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of the other Party regarding measures of general application covered by this Chapter.

6. Each Party's competent authorities shall, to the extent possible, make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

7. Where a Party's competent authority requires additional information from an applicant of an application relating to the supply of financial services, it shall notify the applicant without undue delay of such additional information required.

8. A Party's competent authorities shall make an administrative decision within a reasonable period of time on an application, regarded as complete under its laws and regulations, of a financial service supplier of the other Party, relating to the supply of a financial service, and shall, to the extent possible, promptly notify the applicant of the decision in writing.

Article 11.8
Self-Regulatory Organisations

When membership or participation in, or access to, any self-regulatory organisation is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the former Party, or when the former Party provides directly or indirectly such organisation privileges or advantages in supplying financial services, the former Party shall ensure that such organisation accords national treatment to financial service suppliers of the other Party resident in the former Party.

Article 11.9
Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in the former Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 11.10
Sub-Committee on Financial Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Financial Services (hereinafter referred to in this Chapter as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to financial services, including prudential policies and supervision of financial institutions, with a view to enhancing trade relations between the Parties in the field of financial services and to promoting efficient and transparent administration of their financial systems;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of:

(a) for Australia, officials from the Department of Foreign Affairs and Trade and the Department of the Treasury, or their successors, and, as necessary, officials from the relevant financial regulatory authorities including the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission, or their successors; and

(b) for Japan, officials from the Ministry of Foreign Affairs and the Financial Services Agency, or their successors.

4. The Sub-Committee shall meet annually, or as otherwise agreed. The Sub-Committee shall inform the Joint Committee of the results of each meeting.

Article 11.11
Consultations

Without prejudice to Article 19.4 (Dispute Settlement - Consultations), a Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Sub-Committee. Consultations under this Article and consultations under Article 19.4 (Dispute Settlement - Consultations), that affect financial services shall include officials specified in paragraph 3 of Article 11.10.

Article 11.12
Dispute Settlement

1. Further to subparagraph 9(a) of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), all arbitrators appointed in accordance with paragraphs 5 and 6 of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), for a dispute arising under this Chapter shall, unless otherwise agreed by the Parties, have expertise or experience in laws or practice of financial services, which may include the laws and regulations concerning financial service suppliers.

2. Further to Article 19.15 (Dispute Settlement - Compensation and Suspension of Concessions), where an arbitral tribunal finds a measure of a Party to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

CHAPTER 12
MOVEMENT OF NATURAL PERSONS

Article 12.1
Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the other Party who fall under one of the categories referred to in Annex 10 (Specific Commitments on the Movement of Natural Persons).

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the Area of the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

4. Except for this Chapter and Chapters 1 (General Provisions), 19 (Dispute Settlement) and 20 (Final Provisions), nothing in this Agreement shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

Article 12.2
Definitions

For the purposes of this Chapter, the term "entry and temporary stay" means entry into and stay in a Party by a natural person of the other Party without the intent to establish permanent residence.

Article 12.3
Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter and relevant laws and regulations of the former Party, and subject to the terms of the specific commitments set out in Annex 10 (Specific Commitments on the Movement of Natural Persons).

2. Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party falling under one of the categories referred to in Annex 10 (Specific Commitments on the Movement of Natural Persons), unless otherwise specified in that Annex.

Article 12.4
Transparency

Each Party shall:

(a) publish or otherwise make available to the other Party on the date of entry into force of this Agreement, with respect to natural persons covered by that Party's specific commitments under this Chapter, information on requirements and procedures necessary for an effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party in such a manner as to enable persons of the other Party to become acquainted with them;

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to the entry and temporary stay of natural persons covered by paragraph 1 of Article 12.3; and

(c) endeavour to promptly make available to the other Party information on the introduction of any new requirements and procedures, or changes in any existing requirements and procedures referred to in subparagraph (a) that affect the effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party.

Article 12.5
Requirements and Procedures Relating to the Movement of Natural Persons

1. The competent authorities of each Party shall, without delay, process complete applications for the grant of entry and temporary stay or, where applicable, work permits or certificates of eligibility submitted for natural persons of the other Party, including applications for renewal thereof.

2 If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall, without undue delay, endeavour to notify the applicant.

3. A Party shall, within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting entry and temporary stay is lodged, notify the natural person of the decision concerning the application, including, if approved, the period of temporary stay and other conditions.

4. Each Party shall ensure that fees charged by its competent authorities on applications for the grant of entry and temporary stay do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

5. Each Party shall endeavour, to the extent practicable, to take measures to simplify the requirements and to facilitate and expedite the procedures relating to the movement of natural persons of the other Party, subject to its laws and regulations.

Article 12.6
Dispute Settlement

1. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the natural persons of a Party concerned have exhausted the domestic remedies, where available, regarding the particular matter.

2. The domestic remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of the other Party within two years after the date of the institution of proceedings for such domestic remedy, and the failure to issue such determination is not attributable to delay caused by the natural persons.

CHAPTER 13
ELECTRONIC COMMERCE

Article 13.1
Basic Principles

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.

2. The aim of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties and the wider use of electronic commerce globally.

3. The Parties recognise the principle of technological neutrality in electronic commerce.

Article 13.2
Definitions

For the purposes of this Chapter:

(a) the term "digital products" means such products as computer programmes, text, video, images and sound recordings, or any combinations thereof, that are digitally encoded, electronically transmitted, and produced for commercial sale or distribution, and does not include those that are fixed on a carrier medium;

Note 1: For greater certainty, digital products do not include digitised representations of financial instruments, including money.

Note 2: Nothing in this Chapter shall be considered as affecting the views of either Party on whether trade in digital products through electronic transmission is categorised as trade in services or trade in goods.

(b) the term "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfils both of the following requirements:

(i) that the measure indicates that such information has been approved by a person who has taken such measure; and

(ii) that the measure confirms that such information has not been altered;

(c) the term "electronic transmissions" means transmissions made using any electromagnetic means;

(d) the term "personal data" means any information about an identified or identifiable individual; and

(e) the term "trade administration documents" means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

Article 13.3
Customs Duties

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

Article 13.4
Non-Discriminatory Treatment of Digital Products

1. Neither Party may accord less favourable treatment to some digital products than it accords to other like digital products:

(a) on the basis that the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party;

(b) on the basis that the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or

(c) so as to otherwise afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its Area.

Note: Recognising the Parties' objective of promoting bilateral trade, the term "some digital products" in paragraph 1 refers solely to those digital products created, produced, published, contracted for, or commissioned in the Area of the other Party, or digital products of which the author, performer, producer, or developer is a person of the other Party.

2. Neither Party may accord less favourable treatment to digital products:

(a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. Paragraphs 1 and 2 do not apply to:

(a) non-conforming measures adopted or maintained by a Party in accordance with Article 9.7 (Trade in Services - Non-Conforming Measures) or 14.10 (Investment - Non-Conforming Measures and Exceptions);

(b) the extent that they are inconsistent with Chapter 16 (Intellectual Property);

(c) government procurement;

(d) subsidies provided by a Party or a state enterprise including grants, government-supported loans, guarantees, and insurance; and

(e) services supplied in the exercise of governmental authority, as defined in Article 9.2 (Trade in Services - Definitions).

4. For greater certainty, paragraphs 1 and 2 do not prevent a Party from adopting or maintaining measures, including measures in the audio-visual and broadcasting sectors, in accordance with Article 9.7 (Trade in Services - Non-Conforming Measures) or 14.10 (Investment - Non-Conforming Measures and Exceptions).

Note: Nothing in this Article shall be construed as affecting rights and obligations of the Parties with respect to each other under Article 4 of the TRIPS Agreement.

Article 13.5
Domestic Regulation

1. Each Party shall ensure that measures it adopts or maintains do not unreasonably prohibit or restrict electronic commerce or its development.

2. Neither Party shall adopt or maintain measures regulating electronic transactions that:

(a) deny the legal effect, validity or enforceability of a transaction, including a contract, solely on the grounds that it is in the form of an electronic communication; or

(b) discriminate between different forms of technology,

unless such measures are provided for in its laws and regulations and are administered in a reasonable, objective and impartial manner.

3. Each Party shall, when formulating any new regulations relating to electronic commerce, take into account the importance of industry-led development of electronic commerce.

4. Each Party shall encourage the private sector to adopt self-regulation, including codes of conduct, model contracts, guidelines and enforcement mechanisms, with a view to facilitating electronic commerce.

Article 13.6
Electronic Signature

1. Neither Party shall adopt or maintain measures regulating electronic signature that:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transaction complies with any legal requirements.

2. Notwithstanding paragraph 1, where prescribed by a Party's laws and regulations, that Party may require that, for transactions where a high degree of reliability and security is required, the method of authentication meet certain security standards or be certified by an authority accredited in accordance with that Party's laws and regulations.

3. Each Party shall, as appropriate, encourage the use of electronic signatures based on internationally accepted standards.

4. The Parties shall, where possible, cooperate to work toward the mutual recognition of electronic signatures issued or recognised by either Party.

Article 13.7
Consumer Protection

1. The Parties recognise the importance of adopting and maintaining measures which provide, for consumers using electronic commerce, protection that is at least equivalent to that provided for consumers using other forms of commerce, and measures conducive to the promotion of consumer confidence in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection activities related to electronic commerce in order to enhance consumer protection.

Article 13.8
Personal Data Protection

1. Each Party shall adopt or maintain measures to protect the personal data of electronic commerce users.

2. In the development of protection standards for the personal data of electronic commerce users, each Party shall take into account relevant international standards and criteria of relevant international bodies.

Article 13.9
Paperless Trade Administration

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

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

3. In developing initiatives which provide for the use of paperless trade administration, each Party shall take into account international standards or methods made under the auspices of international organisations.

4. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 13.10
Cooperation

1. The Parties shall, where appropriate, cooperate and participate actively in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall, as appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, in relation to, *inter alia*, consumer confidence, cyber-security, combatting unsolicited commercial electronic messages, intellectual property, electronic government, personal data protection and electronic signatures.

3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.

4. Each Party shall, as appropriate, encourage activities by non-government organisations in that Party which promote electronic commerce, including its secure use.

5. The Parties shall endeavour to cooperate, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce, subject to the laws and regulations of the respective Parties.

CHAPTER 14
INVESTMENT

Article 14.1
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Article 14.9, all investments in the Area of the Party adopting or maintaining the measure.

2. With the exception of Article 14.15, in the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of inconsistency.

Article 14.2
Definitions

For the purposes of this Chapter:

(a) the term "covered investment" means, with respect to a Party, an investment in its Area of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter;

(b) the term "enterprise of a Party" means an enterprise constituted or organised under the law of a Party;

(c) the term "freely usable currencies" means any currency designated as such by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as amended;

(d) the term "investment activities" means the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

(e) the term "investment agreement" means a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment, that grants rights to the covered investment or investor:

(i) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution or sale;

(ii) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(iii) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

Note 1: "Written agreement" means an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties. For greater certainty:

(i) a unilateral act of an administrative or judicial authority, such as a permit, licence, or authorisation issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and

(ii) an administrative or judicial consent decree or order, shall not be considered a written agreement.

Note 2: For the purposes of this definition, "national authority" means an authority at the central level of government.

(f) the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks or other forms of equity participation in an enterprise;

(iii) bonds, debentures, loans and other forms of debt;

(iv) futures, options and other derivatives;

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) claims to money or to any contractual performance related to a business activity and having an economic value;

(vii) intellectual property as defined in Article 16.2 (Intellectual Property - Definitions);

(viii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and

(ix) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; and

Note: Investments may also include amounts yielded by investments that are re-invested, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(g) the term "investor of a Party" means a natural person or an enterprise of a Party, that seeks to make, is making, or has made, an investment in the Area of the other Party.

Article 14.3
National Treatment

Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities in its Area.

Article 14.4
Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities in its Area.

Note: For greater certainty, this Article does not apply to dispute settlement procedures or mechanisms under any international agreement.

Article 14.5
Minimum Standard of Treatment

Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Note 1: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded by a Party to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 14.6
Access to the Courts of Justice

1. Each Party shall with respect to investment activities in its Area accord to investors of the other Party treatment no less favourable than that it accords in like circumstances to its own investors or investors of a non-Party, with respect to access to its courts of justice and administrative tribunals and agencies.

2. Paragraph 1 does not apply to treatment provided to investors of a non-Party pursuant to an international agreement concerning access to courts of justice or administrative tribunals, or judicial cooperation agreements.

Article 14.7
Special Formalities and Information Requirements

1. Nothing in Article 14.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Party and covered investments, such as compliance with registration requirements, or requirements that investors be residents of the Party or that covered investments be legally constituted under the laws and regulations of the Party provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 14.3 and 14.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that covered investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 14.8
Senior Management and Boards of Directors

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions nationals of any particular nationality.

2. A Party may require that a majority or less than a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Area of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 14.9
Prohibition of Performance Requirements

1. Neither Party shall apply in connection with investment activities of an investor of a Party in its Area any measure which is inconsistent with the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

2. Without prejudice to paragraph 1, neither Party shall impose or enforce any of the following requirements, in connection with investment activities of an investor of a Party or of a non-Party in its Area:

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

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

(c) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;

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

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

(f) to transfer technology, a production process or other proprietary knowledge to a person in its Area, except when the requirement:

(i) is imposed or enforced by a court of justice, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under its competition laws and regulations; or

(ii) concerns the disclosure of proprietary information or the use of intellectual property rights which is undertaken in a manner not inconsistent with the TRIPS Agreement; or

(g) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that an investment of the investor produces or the services that an investment of the investor provides.

3. Without prejudice to paragraph 1, neither Party shall condition the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with any of the following requirements:

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

(b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;

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

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

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.

5. Subparagraphs 2(a), 2(b), 2(c), 3(a) and 3(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

6. Subparagraphs 2(b), 2(c), 2(f), 2(g), 3(a) and 3(b) shall not apply to government procurement.

7. Subparagraphs 3(a) and 3(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. Paragraphs 2 and 3 shall not apply to any requirement other than the requirements set out in those paragraphs.

Note: For greater certainty, this Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.

Article 14.10
Non-Conforming Measures and Exceptions

1. Articles 14.3, 14.4, 14.8 and 14.9 shall not apply to:

(a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Schedules in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10):

(i) the central government of a Party; or

(ii) a State or Territory of Australia or a prefecture of Japan;

(b) any non-conforming measure that is maintained by a local government other than a State or Territory or a prefecture referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 14.3, 14.4, 14.8 and 14.9.

2. Articles 14.3, 14.4, 14.8 and 14.9 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors and activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10).

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. In cases where a Party makes an amendment or a modification to any non-conforming measure set out in its Schedule in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) after the date of the entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

(a) on request of the other Party, promptly provide information and respond to questions pertaining to any such proposed or actual amendment, modification or measure;

(b) to the extent possible, provide a reasonable opportunity for comments by the other Party on any such proposed or actual amendment, modification or measure; and

(c) to the maximum extent possible, notify the other Party of any such amendment, modification or measure that may substantially affect the other Party's interests under this Agreement.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) respectively.

6. Articles 14.3 and 14.4 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement.

7. Articles 14.3, 14.4 and 14.8 shall not apply to any measure that a Party adopts or maintains with respect to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

Article 14.11
Expropriation and Compensation

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) upon payment of prompt, adequate and effective compensation in accordance with paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate accrued from the date of expropriation to the date of payment and shall be effectively realisable and freely transferable in accordance with Article 14.13.

4. If payment is made in a freely usable currency, the compensation paid shall include interest, at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

5. If a Party elects to pay in a currency other than a freely usable currency, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than the sum of the following:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; and

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 16 (Intellectual Property).

Note: For greater certainty, the reference to the TRIPS Agreement in paragraph 6 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO members in accordance with the WTO Agreement.

Article 14.12
Treatment in Case of Strife

1. Each Party shall, with respect to restitution, indemnification, compensation or any other settlement, accord to investors of the other Party that have suffered loss or damage to their covered investments due to armed conflict or civil strife such as revolution, insurrection, civil disturbance or any other similar event in its Area, treatment that is no less favourable than that it would accord, in like circumstances, to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned or freely usable currencies.

3. Notwithstanding the provisions of Article 1.10 (General Provisions - Security Exceptions), neither Party shall be relieved of its obligation under paragraph 1 by reason of its measures taken pursuant to that Article.

Article 14.13
Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely into and out of its Area without delay. Such transfers shall include those of:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interest, fees and other current incomes accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including loan payments in connection with investments;

(e) earnings and remuneration of personnel from abroad who work in connection with investments in the Area of the Party;

(f) payments made in accordance with Articles 14.11 and 14.12; and

(g) payments arising out of a dispute.

2. Each Party shall allow such transfers to be made in freely usable currencies at the market exchange rate prevailing at the time of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good-faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities or derivatives;

(c) criminal or penal offences;

(d) reporting or record keeping of transfers of currency or other monetary instruments when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 14.14
Subrogation

If a Party or its designated agency makes a payment to an investor of the Party pursuant to an indemnity, guarantee or insurance contract pertaining to an investment of that investor within the Area of the other Party, that other Party shall recognise:

(a) the assignment, to the Party or its designated agency, of any right or claim of the investor in respect of such investment, that formed the basis of such payment; and

(b) the right of the Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

Article 14.15
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between covered investments or investors of the other Party and other investments or investors, where like conditions prevail, or a disguised restriction on investment, nothing in Articles 14.3, 14.4, and 14.9 shall prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

Note: This exception includes environmental measures necessary to protect human, animal or plant life or health.

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(e) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Article 14.16
Temporary Safeguard Measures

1. A Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payments or transfers for transactions related to covered investments:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.

2. Restrictive measures referred to in paragraph 1 shall:

(a) be applied such that the other Party is treated no less favourably than any non-Party;

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1;

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

(e) be promptly notified to the other Party; and

(f) avoid unnecessary damages to the commercial, economic and financial interests of the other Party.

3. The Party which has adopted any measures under paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictions adopted by it.

Article 14.17
Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party or of the denying Party and the enterprise has no substantial business activities in the Area of the other Party.

Note: For the purposes of this Article, an enterprise is:

(a) "owned" by an investor if more than 50 per cent of the equity interest in it is beneficially owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

Article 14.18
Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) exchanging information on any matters related to this Chapter;

(b) reviewing and monitoring the implementation and operation of this Chapter and the non-conforming measures set out in each Party's Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10);

(c) discussing any issues related to this Chapter;

(d) considering any issues raised by either Party concerning the imposition or enforcement of performance requirements, including those specified in Article 14.9;

(e) considering any issues raised by either Party concerning investment agreements between a Party and an investor of the other Party;

(f) reporting the findings and outcome of discussions of the Sub-Committee to the Joint Committee; and

(g) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

Article 14.19
Review

1. Unless the Parties otherwise agree, the Parties shall conduct a review of this Chapter with a view to the possible improvement of the investment environment through, for example, the establishment of a mechanism for the settlement of an investment dispute between a Party and an investor of the other Party. Such review shall commence in the fifth year following the date of entry into force of this Agreement or a year on which the Parties otherwise agree, whichever comes first.

2. The Parties shall also conduct such a review if, following the entry into force of this Agreement, Australia enters into any multilateral or bilateral international agreement providing for a mechanism for the settlement of an investment dispute between Australia and an investor of another or the other party to that agreement, with a view to establishing an equivalent mechanism under this Agreement. The Parties shall commence such review within three months following the date on which that international agreement entered into force and will conduct the review with the aim of concluding it within six months following the same date.

3. At any time after the first year following the entry into force of this Agreement, either Party may request the other Party to agree to commence the review provided for in paragraph 1.

CHAPTER 15
COMPETITION AND CONSUMER PROTECTION

Article 15.1
Objectives

The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement by promoting economic efficiency and consumer welfare through the promotion of competition and cooperation on consumer protection.

Article 15.2
Definitions

For the purposes of this Chapter:

(a) the term "anticompetitive activities" means any conduct or transaction that adversely affects competition and may be subject to penalties or other relief under the competition laws of either Party;

(b) the term "competition authority" means:

(i) for Australia, the Australian Competition and Consumer Commission, or its successor; and

(ii) for Japan, the Fair Trade Commission, or its successor; and

(c) the term "competition law" means:

(i) for Australia, Parts IV and XIA of the *Competition and Consumer Act 2010*, and any regulations made under those Parts; and provisions of other Parts in so far as they relate to Part IV, but not including Part X; as well as any amendments thereto;

(ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) and its implementing regulations as well as any amendments thereto; and

(iii) for both Australia and Japan, such other laws and regulations as the Parties may from time to time mutually determine to be a "competition law".

Article 15.3
Promotion of Competition by Addressing Anticompetitive Activities

1. Each Party shall, subject to its laws and regulations, take measures which it considers appropriate to promote competition, especially by addressing anticompetitive activities.

2. Any measures referred to in paragraph 1 shall be consistent with the principles of transparency, non-discrimination and procedural fairness.

Article 15.4
State-Owned Enterprises

In addition to Article 15.3, bearing in mind the relationship between the promotion of competition and other policy objectives, the Parties recognise that seeking to ensure that governments do not provide competitive advantages to state-owned enterprises simply because they are state owned can contribute to the promotion of competition.

Article 15.5
Cooperation on Addressing Anticompetitive Activities

1. The Parties recognise the importance of cooperation to further the promotion of competition.

2. The Parties shall, subject to their respective laws and regulations as well as available resources, cooperate on the promotion of competition by addressing anticompetitive activities.

3. Cooperation may include, but is not limited to, exchange of information, notification and coordination of enforcement activities, and consultation.

4. Detailed cooperation arrangements to implement this Article may be made between the competition authorities of the Parties.

Article 15.6
Cooperation on Consumer Protection

The Parties recognise the importance of cooperation on matters related to consumer protection in order to enhance consumer welfare in their respective Areas. Accordingly, the Parties shall cooperate, where appropriate, on matters relating to consumer protection, such as through exchange of publicly available information and experience.

Article 15.7
Consultations

The Parties, recognising the importance of respecting the independence of each competition authority to enforce their competition laws, shall consult with each other, on request of either Party, on any matter which may arise in connection with this Chapter.

Article 15.8
Confidentiality of Information

1. Each Party's competition authority may share information with the other Party's competition authority subject to each Party's laws and regulations.

2. Recognising the importance of confidentiality when exchanging information that is not publicly available, the competition authority of the Party receiving such information may only use or disclose that information in accordance with conditions imposed by the providing Party's competition authority.

3. Information provided by the competition authority of a Party to the competition authority of the other Party shall not be used by the other Party for presentation in criminal proceedings carried out by a court or a judge, unless, on request of the other Party, such information was provided for use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties.

4. This Article shall not preclude the use or disclosure of information provided in accordance with this Chapter to the extent such use or disclosure is required by the laws and regulations of the Party receiving the information. The competition authority of a Party shall, wherever possible, give advance notice of any such use or disclosure to the competition authority of the other Party providing the information.

Article 15.9
Non-Application of Chapter 19 (Dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

CHAPTER 16
INTELLECTUAL PROPERTY

Article 16.1
General Provisions

1. Each Party shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of its intellectual property system and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, including counterfeiting and piracy, in accordance with the provisions of this Chapter.

2. Each Party reaffirms its rights and obligations under the international agreements relating to intellectual property to which both Parties are party.

3. Each Party shall endeavour to participate in international efforts, at various fora, in harmonising intellectual property systems.

Article 16.2
Definitions

For the purposes of this Chapter:

(a) the term "intellectual property" means:

(i) copyright and related rights, trade marks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, and protection of undisclosed information as defined or referred to in the TRIPS Agreement; and

(ii) new varieties of plants as defined or referred to in the UPOV Convention;

(b) the term "nationals" shall have the same meaning as in Article 1 of the TRIPS Agreement;

(c) the term "Paris Convention" means the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as amended; and

(d) the term "UPOV Convention" means the International Convention for the Protection of New Varieties of Plants done at Paris on 2 December 1961, as amended.

Article 16.3
National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions provided in the TRIPS Agreement.

2. The Parties may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Note: For the purposes of this Article, the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically covered in this Chapter. Further, for the purposes of this Article, the term "protection" includes the prohibition of circumvention of effective technological measures specified in paragraph 1 of Article 16.12.

Article 16.4
Streamlining of Procedural Matters

For the purposes of providing efficient administration of its intellectual property system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.

Article 16.5
Acquisition and Maintenance of Intellectual Property Rights

1. In relation to the substantive examination of applications for patents, applications for registrations of new plant varieties and trade marks, and applications for registrations, or registrations, of industrial designs, neither Party shall refuse an application or a registration without notifying the applicant in writing of the reasons for such refusal and giving the applicant at least one opportunity, prior to the decision of refusal, to make amendments to the application or the registration and submit their written opinions. Each Party shall ensure that, where the examined application or registration is refused, the applicant has an opportunity to appeal against the decision of refusal.

2. Each Party shall, in accordance with its laws and regulations, maintain judicial or administrative tribunals or procedures for the purpose of the examination, review, correction, opposition, invalidation, revocation or cancellation, as appropriate, of a grant of a patent, or the registration of a new plant variety, trade mark or industrial design.

Article 16.6
Transparency

For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

(a) publish, on the Internet or otherwise, information on:

(i) applications for patents;

(ii) grants of patents;

(iii) registrations of industrial designs;

(iv) applications for registration of trade marks;

(v) registrations of trade marks;

(vi) applications for registration of new varieties of plants; and

(vii) registrations of new varieties of plants,

and make available to the public information contained in dossiers for the above applications, grants and registrations;

(b) make available to the public information on applications for the suspension by its competent authorities of the release of goods suspected of infringing intellectual property rights as a border measure;

(c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights; and

(d) make available to the public, on the Internet or otherwise, other information with regard to its intellectual property system, including laws, regulations and guidelines.

Article 16.7
Promotion of Public Awareness of Protection of Intellectual Property

The Parties shall take necessary measures to promote public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 16.8
Patents

The Parties shall cooperate to enhance mutual utilisation of search and examination results so as to allow applicants to obtain patents in an efficient and expeditious manner.

Article 16.9
Trade Marks

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trade mark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes and combinations of colours as well as any combination of such signs, shall be eligible for registration as a trade mark. Where signs are not inherently capable of distinguishing the relevant goods or services, each Party may make eligibility for registration depend on distinctiveness acquired through use.

Article 16.10
Geographical Indications

1. Each Party shall recognise that geographical indications are eligible for protection through a trade mark system or other legal means.

2. The relationship between the protection of trade mark rights and that of geographical indications shall be in accordance with the TRIPS Agreement.

3. Each Party shall ensure that protection measures for geographical indications are transparent, readily available and understandable to the public.

4. The Parties may exchange views on issues related to this Article including protection of geographical indications. The Sub-Committee on Intellectual Property referred to in Article 16.21 shall provide a forum for this purpose.

5. The Parties shall review this Article, with a view to considering further provisions, five years after the date of entry into force of this Agreement, unless the Parties otherwise agree. The Sub-Committee on Intellectual Property referred to in Article 16.21 shall provide a forum for this purpose.

Article 16.11
New Varieties of Plants

Each Party shall, in accordance with its rights and obligations under the UPOV Convention, provide for protection of plant varieties by granting and protecting rights in a plant variety where the variety is new, distinct, uniform and stable.

Article 16.12
Copyright and Related Rights

1. With respect to copyright and related rights, each Party shall provide:

(a) adequate legal protection; and

(b) effective criminal penalties or civil remedies or any combination thereof, against the circumvention of effective technological measures that are used by authors, performers, or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are neither authorised by the authors, performers or producers of phonograms concerned nor permitted in certain special cases by the laws and regulations of the Party.

2. Each Party shall ensure that its collective management organisations are encouraged to:

(a) operate to collect and distribute revenues to their members in a manner that is fair, efficient, transparent and accountable; and

(b) adopt open and transparent record keeping of the collection and distribution of revenues.

3. In civil judicial proceedings involving copyright, each Party shall provide for a presumption that, in the absence of evidence to the contrary, the person whose name is indicated on a work in the usual manner as the name of the author of the work is the author of the work. This paragraph shall be applicable even if such name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his or her identity.

4. Each Party shall confine limitations or exceptions to exclusive rights of copyright and related rights to certain special cases which do not conflict with a normal exploitation of a work, performance or phonogram and do not unreasonably prejudice the legitimate interests of the right holder.

Note: With respect to works, performances and phonograms, paragraph 4 does not reduce the capacity of each Party to provide for limitations or exceptions in accordance with multilateral agreements related to intellectual property to which that Party is, or becomes, a party.

Article 16.13
Protection of Undisclosed Information

Each Party shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article 16.14
Utility Models

The Parties reaffirm their rights and obligations for the protection of utility models in accordance with the Paris Convention.

Article 16.15
Unfair Competition

Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.

Article 16.16
Internet Service Providers

Each Party shall take appropriate measures to limit the liability of, or remedies available against, Internet service providers for copyright infringement by the users of their online services or facilities, where the Internet service providers take action to prevent access to the materials infringing copyright in accordance with the laws and regulations of the Party.

Article 16.17
Enforcement - General

Each Party shall maintain mechanisms for the effective enforcement of intellectual property rights including border measures, civil remedies and criminal procedures and penalties in accordance with Articles 16.18 through 16.20. These mechanisms may also include:

(a) public or private advisory groups; and

(b) internal coordination among, and joint actions by, national government agencies concerned with enforcement of intellectual property rights.

Article 16.18
Enforcement - Border Measures

1. Each Party shall provide for procedures concerning the suspension at the border by its customs administration, *ex officio*, of the release of goods suspected of infringing rights to trade marks, or copyright or related rights, which are destined for importation into and exportation from the Party.

2. Each Party shall provide for procedures concerning the suspension at the border by its customs administration, on request of a right holder, of the release of goods suspected of infringing rights to trade marks, or copyright or related rights, which are destined for importation into the Party.

3. Each Party may provide for procedures concerning the suspension at the border by its customs administration of the release of goods suspected of infringing rights to trade marks, or copyrights or related rights which:

(a) are destined for exportation from the Party, on request of a right holder; and

(b) are destined for transhipment through the Party, *ex officio* or on request of a right holder.

4. Each Party may provide for procedures concerning the suspension at the border by its customs administration of the release of goods suspected of infringing rights to patents, industrial designs or new varieties of plants, which are destined for importation into, exportation from or transhipment through the Party.

5. In the case of suspension with respect to importation or exportation, in accordance with the procedures referred to in this Article, the competent authorities of the importing Party upon importation, or of the exporting Party upon exportation, shall, where authorised in accordance with its laws and regulations or by its judicial authorities, notify the right holder of the names and addresses of the importer and the consignor, or the exporter and the consignee, of the goods in question, as the case may be.

6. Once a positive determination regarding infringement has been made, each Party shall ensure that the goods, the release of which has been suspended in accordance with the procedures referred to in this Article, will not be released into the channels of commerce without the consent of the right holder, and that the goods will be destroyed or disposed of in accordance with its laws and regulations, except with the consent of the right holder, or otherwise, in exceptional circumstances.

7. Each Party shall provide for simplified procedures, to be used when the importer does not object, for the competent authorities to seize, destroy or dispose of the goods the release of which has been suspended in accordance with the procedures referred to in paragraph 2.

Note: For the purposes of this Article, the term "transhipment" means transhipment, as defined in the International Convention on the Simplification and Harmonization of Customs Procedures, done at Kyoto on 18 May 1973, as amended.

Article 16.19
Enforcement - Civil Remedies

1. Each Party shall provide that in civil judicial proceedings by a right holder of intellectual property rights against a person who knowingly, or with reasonable grounds to know, infringed the right holder's intellectual property rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement of the right holder's intellectual property rights.

2. Each Party shall ensure, subject to its laws and regulations, that its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.

Article 16.20
Enforcement - Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of trade mark counterfeiting, copyright or related rights piracy or infringement of rights relating to new varieties of plants, committed wilfully and on a commercial scale.

2. Each Party shall treat wilful importation or exportation of goods covered by paragraph 1 as unlawful activities subject to criminal penalties. A Party may comply with its obligation relating to importation and exportation of goods covered by paragraph 1 by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

3. Penalties applicable to the cases referred to in paragraphs 1 and 2 shall include imprisonment and/or monetary fines sufficient to provide a deterrent, that are consistent with the level of penalties applied for crimes of a corresponding gravity.

4. Each Party shall ensure, at least in cases of trade mark counterfeiting or infringement of rights relating to new varieties of plants, committed wilfully and on a commercial scale, that its competent authorities may institute prosecution *ex officio*, without the need for a formal complaint by the right holder whose right has been infringed.

5. Each Party shall ensure that in cases of trade mark counterfeiting or copyright or related rights piracy committed wilfully and on a commercial scale, its judicial authorities may order the confiscation of crime proceeds and properties derived from such crime proceeds, in accordance with its laws and regulations.

Note: For the purposes of this paragraph, for Australia, its judicial authorities shall only be required to order the confiscation of crime proceeds and properties derived from such crime proceeds, in respect of offences defined as "indictable offences" under its law.

6. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging:

(a) to which a mark has been applied without authorisation which is identical to, or cannot be distinguished from, a trade mark registered in its Area; and

(b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trade mark is registered.

Note 1: A Party may comply with its obligation under this paragraph relating to importation of labels or packaging through its measures concerning distribution.

Note 2: A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trade mark offence.

Article 16.21
Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property, including geographical indications, covered by this Chapter;

(c) overseeing ongoing cooperation between the Parties in relation to the protection of intellectual property, enforcement of intellectual property rights and administration of their intellectual property systems;

(d) reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee to provide advice on specific issues.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

CHAPTER 17
GOVERNMENT PROCUREMENT

Article 17.1
Scope

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, the term "covered procurement" means a government procurement of goods, services or both:

(a) by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, build-operate-transfer contracts and public works concession contracts;

(b) that is conducted by a procuring entity;

(c) where the value of the contracts to be awarded is estimated in accordance with Article 17.5 to be not less than the thresholds specified in Annex 13 (Government Procurement) at the time of publication of a notice in accordance with Article 17.10;

(d) subject to the conditions specified in Annex 13 (Government Procurement); and

(e) that is not excluded from coverage by this Agreement.

3. This Chapter shall not apply to:

(a) procurement of goods and services by a procuring entity from another entity of the same Party, or between a procuring entity of a Party and a regional or local government of that Party;

(b) non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and sponsorship arrangements;

(c) procurement for the direct purpose of providing international assistance, including development aid;

(d) procurement of research and development services;

(e) procurement of goods and services outside the Area of the procuring Party, for consumption outside the Area of the procuring Party;

(f) public employment contracts;

(g) procurement conducted under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(h) procurement funded by grants and sponsorship payments received from a person other than a procuring entity of a Party;

(i) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;

(j) procurement conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; and

(k) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities.

4. Neither Party shall prepare, design or otherwise structure any government procurement contract in order to avoid the obligations under this Chapter.

Article 17.2
Definitions

For the purposes of this Chapter:

(a) the terms "build-operate-transfer contract" and "public works concession contract" mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for, the use of such works for the duration of the contract;

(b) the term "conditions for participation" means minimum conditions that potential suppliers must meet in order to participate in a procurement process or for submissions to be considered. This may include a requirement to undertake an accreditation or validation procedure;

(c) the term "in writing" means any worded or numbered expression that can be read, reproduced, and later communicated. This may include electronically transmitted and stored information;

(d) the term "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(e) the term "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that a Party intends to use more than once;

(f) the term "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(g) the term "procuring entity" means an entity covered in Annex 13 (Government Procurement);

(h) the term "publish" means to disseminate information in an electronic or paper medium that is available widely and is readily accessible to the general public;

(i) the term "selective tendering" means a procurement method whereby those suppliers invited to do so by the procuring entity may submit a tender;

(j) the term "services" includes construction services unless otherwise specified; and

(k) the term "supplier" means a person that provides or could provide goods or services to a procuring entity.

Article 17.3
National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party shall accord, immediately and unconditionally, to the goods, services and suppliers of the other Party, treatment no less favourable than that it accords to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party shall not:

(a) treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. This Article shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than measures governing covered procurement.

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

5. For greater certainty, all orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2.

Article 17.4
Rules of Origin

For the purposes of covered procurement, neither Party shall apply rules of origin to goods or services that are different from the rules of origin the Party applies in the normal course of trade to those goods or services.

Article 17.5
Valuation of Contracts

1. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement under this Chapter:

(a) valuation shall take into account all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for under the contract;

(b) the selection of the valuation method by a procuring entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and

(c) in cases where an intended procurement specifies the need for or provides for the possibility of option clauses, the basis for valuation shall be the maximum total value of the procurement, inclusive of optional purchases.

2. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

Article 17.6
Prohibition of Offsets

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset. The term "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements.

Article 17.7
Technical Specifications

1. Technical specifications shall not be prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

2. Requirements relating to conformity assessment procedures shall not be prescribed with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

3. For the purposes of this Article, the term "technical specification" means a tendering requirement that sets out:

(a) the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(b) terminology, symbols, packaging, marking and labelling requirements, as they apply to goods or services.

4. Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be specified in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) be based on international standards, where such exist; otherwise, on national technical regulations, recognised national standards, or building codes.

5. There shall be no requirement or reference to a particular trademark or trade name, patent, copyright, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

6. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

7. Notwithstanding paragraph 6, a procuring entity may:

(a) conduct market research in developing specifications for a particular procurement; or

(b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.

8. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Article 17.8
Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its procuring entities are applied in a non-discriminatory and transparent manner that is consistent with this Chapter.

2. A procuring entity shall use open, selective or limited tendering procedures.

Article 17.9
Conditions for Participation

1. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of the other Party than to domestic suppliers.

2. A Party and its procuring entities may establish a multi-use list, provided that the procuring entity or other government agency annually publishes or otherwise makes available, continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of the conditions; and

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the entity and obtain all relevant documents relating to the list.

3. The process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement.

4. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

5. For greater certainty, a procuring entity may allow suppliers who have not yet qualified to tender in an intended procurement to participate in that procurement, provided that there is sufficient time to complete the qualification procedure.

Article 17.10
Notice of Procurement

1. In an open tendering procedure and, where appropriate, a selective tendering procedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders (hereinafter referred to as "notice of procurement") or application for participation in a procurement, in such a way as to be readily accessible to any interested supplier of the other Party for the entire period established for tendering.

2. The information in each notice of procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, and the time-limits for submission of tenders.

3. Procuring entities are encouraged to publish, prior to or as early as possible in the fiscal year, a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject matter of each procurement and the planned date of the publication of the notice of procurement or commencement of the related tender procedure.

Article 17.11
Selective Tendering

1. To ensure optimum effective competition under selective tendering procedures, procuring entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Party, taking due account of the efficient operation of the procurement system and market conditions. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

2. For greater certainty, a procuring entity applying selective tendering may use a list of qualified suppliers or a multi-use list established in accordance with Article 17.9.

Article 17.12
Time-Limits for Tendering

1. Each Party shall ensure that:

   (a) any prescribed time-limit is adequate to allow suppliers to prepare and submit tenders before the closing of the tendering procedures; and

   (b) in determining any such time-limit, its procuring entities, consistent with their own reasonable needs, take into account such factors as the date of publication of the tender notice, the complexity of the intended procurement and the extent of subcontracting anticipated.

2. For each covered procurement, the final date and time for submission of tenders determined by the procuring entity shall be the same for all suppliers participating in the tendering procedure. For greater certainty, this requirement shall also apply where:

   (a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time-limits for qualification or tendering procedures; or

   (b) negotiations are terminated and suppliers may submit new tenders.

Article 17.13
Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders, including all criteria that the procuring entity will consider in awarding the contract.

2. A procuring entity shall respond promptly to any reasonable request for relevant information, including a request for explanations relating to tender documentation, submitted by a supplier participating in the tendering procedure.

3. Information relating to a specific procurement shall not be provided in a manner which would have the effect of giving a potential supplier or group of potential suppliers an advantage over competitors.

4. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of procurement or tender documentation provided to participating suppliers, or amends or re-issues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article 17.14
Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. A procuring entity shall receive, open and treat all tenders in accordance with procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat all tenders in confidence to the extent permitted by the laws and regulations of the Party. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

5. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notice of procurement or tender documentation.

6. A contract may only be awarded to a supplier that the procuring entity has determined to have complied with the conditions for participation. If a procuring entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that the tenderer can comply with the conditions for participation and is capable of fulfilling the terms of the contract.

7. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the criteria and requirements specified in the notices and tender documentation, has submitted:

(a) the most advantageous, best value or overall greatest value tender; or

(b) where price is the sole criterion, the lowest price.

8. A procuring entity shall not use option clauses, cancel a procurement or modify awarded contracts in order to avoid the obligations under this Chapter.

Article 17.15
Limited Tendering

1. A procuring entity may use limited tendering, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against the suppliers of the other Party or protection to domestic producers or suppliers. When a procuring entity applies limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 17.7 through 17.14.

2. Subject to paragraph 1, a procuring entity may use limited tendering only under the following conditions:

(a) on condition that the requirements of the initial tender are not substantially modified in the contract as awarded:

(i) no tenders were submitted or no suppliers requested participation;

(ii) all tenders submitted have been collusive;

(iii) no tenders were submitted that conform to the essential requirements in the tender documentation; or

(iv) no suppliers satisfied the conditions for participation;

(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable or unforeseen by the procuring entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier of goods or services, or its authorised representative, that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations; or

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(e) when a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

Note: Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards.

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions which only arise in the very short term such as from unsolicited innovative proposals, unusual disposals, or disposal of assets of businesses in liquidation, bankruptcy or receivership and not routine purchases from regular suppliers;

(h) in the case of contracts awarded to the winner of a design contest provided that the contest has been organised in a manner which is consistent with the principles of this Chapter and the contest is judged by an independent jury with a view to design contracts being awarded to the winner; or

(i) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following open tendering or selective tendering in accordance with this Chapter and for which the procuring entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for those construction services.

3. Procuring entities shall prepare a report in writing on each contract awarded under this Article. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, and a statement of the conditions in this Article which prevailed.

Article 17.16
Post-Award Information

1. Each Party, including its procuring entities shall publish a notice no later than 72 days after the award of each contract for a covered procurement. Such notice shall contain:

(a) a description of the goods or services procured, which may include quantity;

(b) the name and address of the entity awarding the contract;

(c) the contract date or the date of award;

(d) the name and address of the contracted supplier or winning tenderer;

(e) the value of the contract or the value of the winning award or the highest and the lowest offer taken into account in the award of the contract; and

(f) the procurement method used.

2. A procuring entity shall promptly inform suppliers that have submitted tenders of the contract award decision. Subject to Article 17.18, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons why the procuring entity did not select its tender.

3. A procuring entity shall maintain documentation and reports relating to the conduct of procurements covered by this Chapter, including reports required by paragraph 3 of Article 17.15, for a period of at least three years after the date it awards a contract.

Article 17.17
Information on the Procurement System

1. Each Party shall promptly publish its procurement laws, regulations, procedures and policy guidelines relating to covered procurements, and any changes or additions thereto.

2. Each Party shall promptly reply to any request from the other Party for an explanation of any matter relating to its procurement laws, regulations, procedures and policy guidelines.

Article 17.18
Non-Disclosure of Information

Nothing in this Chapter shall be construed to require a Party or its procuring entities to disclose, furnish or allow access to confidential information furnished by a person where such disclosure might prejudice fair competition between suppliers, without the authorisation of the person that furnished the confidential information.

Article 17.19
Challenge Procedure

1. In the event of a complaint by a supplier that there has been a breach of measures implementing the obligations of this Chapter in the context of a covered procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that suppliers submit, in accordance with the Party's laws, regulations and procedures, relating to a covered procurement.

3. Each Party shall make information on complaint mechanisms generally available.

Article 17.20
Exceptions

1. Further to Article 1.10 (General Provisions - Security Exceptions), nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions or of prison labour.

3. The Parties understand that subparagraph 2(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 17.21
Ensuring Integrity in Procurement Processes

1. Each Party shall ensure that criminal or administrative penalties exist to prevent corruption in its government procurement.

2. Procuring entities shall conduct covered procurement in a transparent and impartial manner which:

(a) eliminates any conflicts of interest for persons administering a tendering procedure wherever possible; or

(b) for situations where it is not possible to fully eliminate such conflicts, prevent such interests from influencing procedures or decisions made in the course of a procurement.

Article 17.22
Rectifications or Modifications

1. A Party shall notify the other Party in writing of any proposed rectification or modification of its Part to Annex 13 (Government Procurement) (any of which is hereinafter referred to in this Article as "modification"). Notification may include, where necessary to maintain a level of coverage comparable to that existing prior to the modification, an offer of compensatory adjustment.

2. Proposed modifications shall become effective provided the other Party does not object in writing to the modifying Party within 45 days after the date of notification.

3. A Party need not provide compensatory adjustments to the other Party where a proposed modification is of a purely formal or minor nature to its Part to Annex 13 (Government Procurement), such as:

(a) changes in the name of a procuring entity;

(b) merger of one or more procuring entities;

(c) the separation of a procuring entity into two or more entities that are all added to the list of procuring entities in the same Section of Annex 13 (Government Procurement); and

(d) changes in website references.

4. Where the Parties do not agree on the proposed modification, the objecting Party may request further information with a view to clarifying the proposed modification or may request that an offer of compensation be made where the objecting Party considers that compensation is necessary to maintain a level of coverage comparable to that existing prior to the modification. The Parties shall make every attempt to resolve the objection through consultations.

5. Where the Parties resolve the objection through consultations, the Parties shall notify the contact points provided under Article 1.14 (General Provisions - Communications) of the agreed modifications.

6. Neither Party shall undertake modifications to avoid the obligations of this Chapter.

Article 17.23
Privatisation of Procuring Entities

When government control over a procuring entity specified in Annex 13 (Government Procurement) has been effectively eliminated, notwithstanding that the government may possess holding thereof or appoint members of the board of directors thereto, this Chapter shall no longer apply to that entity and compensation need not be proposed. A Party shall notify the other Party of the name of such entity before elimination of government control or as soon as possible thereafter. Notification shall include evidence of such elimination.

Article 17.24
Further Negotiation

In the event that after the entry into force of this Agreement a Party offers a non-Party additional advantages of binding access to its government procurement market beyond what the other Party has been provided with under this Chapter, the former Party shall, on request of the other Party, enter into negotiations with the other Party with a view to extending those advantages to the other Party on a reciprocal basis.

Article 17.25
Cooperation

1. Each Party shall reply to any request from the other Party for an explanation of any matter relating to the application of this Chapter, including matters related to its procurement laws, regulations and policy guidelines.

2. Each Party shall use the contact point referred in Article 1.14 (General Provisions - Communications) for any request made pursuant to this Article.

3. The Joint Committee shall have responsibility for reviewing the implementation and operation of this Chapter.

CHAPTER 18
PROMOTION OF A CLOSER ECONOMIC RELATIONSHIP

Article 18.1
Cooperation

1. The Parties shall endeavour to cooperate and take appropriate measures to promote a closer economic relationship, including between their business sectors, in accordance with their respective laws and regulations.

2. The Parties, confirming their willingness to promote a closer economic relationship, shall hold consultations in accordance with this Chapter.

Article 18.2
Sub-Committee on Promotion of a Closer Economic Relationship

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Promotion of a Closer Economic Relationship (hereinafter referred to in this Chapter as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter, including, as appropriate:

(i) ways to promote a closer economic relationship between the Parties;

(ii) ways to further remove obstacles to trade and investment between the Parties and to facilitate business activities between the Parties; and

(iii) possibilities for cooperation in the government and business sectors to promote bilateral trade and investment;

(c) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee;

(d) making recommendations, as necessary, to the Joint Committee on appropriate measures to be taken by the Parties; and

(e) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

4. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) shall take all its actions by mutual consent of the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the business sector, with the necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

6. The Sub-Committee shall cooperate with other relevant Sub-Committees with a view to avoiding unnecessary overlap with their work. The Joint Committee shall, if necessary, give instructions to this end.

Article 18.3
Functions of the Contact Point

1. The functions of the contact point of each Party designated in accordance with Article 1.14 (General Provisions - Communications), in regard to the implementation of this Chapter, shall be:

(a) receiving concerns or enquiries expressed by the other Party's enterprises relating to business activities between the Parties;

(b) responding to the concerns or enquiries referred to in subparagraph (a), where appropriate, in collaboration with other relevant authorities of the Party; and

(c) reporting, as appropriate, relevant issues to the Sub-Committee.

2. A Party may designate an authority to help facilitate communications under paragraph 1 between its business sector and the contact point of the other Party.

3. Paragraphs 1 and 2 shall not prevent or restrict any contact by a Party's business sector directly with relevant authorities of the other Party.

Article 18.4
Non-Application of Chapter 19 (Dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

CHAPTER 19
DISPUTE SETTLEMENT

Article 19.1
Scope

Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the implementation, interpretation or application of this Agreement.

Article 19.2
Definitions

For the purposes of this Chapter, the term "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement.

Article 19.3
Choice of Dispute Settlement Procedure

1. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement.

2. Notwithstanding paragraph 1, once a dispute settlement procedure has been initiated by a Party under this Chapter or under any other international agreement to which both Parties are party with respect to a particular dispute, that Party shall not initiate another dispute settlement procedure with respect to that particular dispute, unless:

(a) substantially separate and distinct rights or obligations under different international agreements are in dispute;

(b) the dispute settlement procedure which has been initiated fails to make findings on the issues in dispute for jurisdictional or procedural reasons; or

(c) the complaining Party terminates the dispute settlement procedure which has been initiated, prior to the issuance of any award or report by the dispute settlement body, whether draft, interim or final, and initiates a new dispute settlement procedure in another forum with respect to that particular dispute, provided that the dispute settlement procedure to be terminated is the first dispute settlement procedure which has been initiated by the complaining Party for that particular dispute and that the complaining Party provides an interval of at least 30 days between the date of the termination of the first dispute settlement procedure and the date on which it initiates a new dispute settlement procedure.

3. For the purposes of paragraph 2:

(a) a dispute settlement procedure under this Chapter shall be deemed to be initiated by a Party when it requests the establishment of an arbitral tribunal in accordance with paragraph 1 of Article 19.6, and deemed to be terminated by the complaining Party when it notifies the Party complained against and the chair of the arbitral tribunal of its intention to terminate the proceedings of the arbitral tribunal in accordance with paragraph 3 of Article 19.11; and

(b) a dispute settlement procedure under the WTO Agreement shall be deemed to be initiated by a Party when it requests the establishment of a panel in accordance with Article 6 of the DSU, and deemed to be terminated by the complaining Party when it requests the panel to suspend its work in accordance with paragraph 12 of Article 12 of the DSU.

Note: For the purposes of subparagraph 3(b), it is understood that where the complaining Party requests a Panel under the DSU to suspend its work, that Party shall not request the Panel to resume its work.

Article 19.4
Consultations

1. Either Party may request consultations with the other Party if it considers:

(a) any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of:

(i) the application by the other Party of a measure which is inconsistent with this Agreement; or

(ii) the failure of the other Party to carry out its obligations under this Agreement; or

(b) any benefit accruing to it directly or indirectly under Chapter 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures), 9 (Trade in Services) or 16 (Intellectual Property) is being nullified or impaired as a result of the application by the other Party of a measure that is not inconsistent with the provisions of those Chapters, provided that the complaining Party presents a detailed justification in support of any complaint relating to that measure.

2. Any request by a Party for consultations shall be submitted to the other Party in writing and give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis for the complaint.

3. With a view to reaching a prompt and satisfactory resolution of the matter, when a Party requests consultations in accordance with paragraph 1, the other Party shall reply promptly to the request and enter into consultations in good faith within 30 days, or within 15 days in cases of urgency which concern perishable goods, after the date of receipt of the request.

Article 19.5
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time if the Parties agree and, on request of either Party, be terminated at any time.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

Article 19.6
Establishment and Composition of Arbitral Tribunals

1. The complaining Party that requested consultations in accordance with Article 19.4 may request, in writing, to the Party complained against, the establishment of an arbitral tribunal if:

(a) the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency which concern perishable goods, after the date of receipt of the request for such consultations; or

(b) the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency which concern perishable goods, after the date of receipt of the request for such consultations.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall:

(a) identify the specific measures at issue;

(b) provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly, including the provisions alleged to have been breached and any other relevant provisions of this Agreement; and

(c) provide a brief summary of the factual basis for the complaint.

3. When a request is made by the complaining Party in accordance with paragraphs 1 and 2, an arbitral tribunal shall be established in accordance with this Article.

4. The arbitral tribunal shall consist of three arbitrators, including a chair.

5. Unless the Parties otherwise agree, each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the chair. The chair shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

6. The Parties shall agree on and appoint the chair within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed in accordance with paragraph 5. If appropriate, the Parties may jointly consult the arbitrators appointed in accordance with paragraph 5.

7. If any of the three appointments have not been made within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, any arbitrators not yet appointed shall be appointed, on request of either Party, by lot from the list of the candidates proposed in accordance with paragraph 5. The appointment by lot shall be undertaken within seven days after the date of receipt of the request for appointment by lot, unless the Parties otherwise agree. Where more than one arbitrator including a chair is to be selected by lot, the chair shall be selected first.

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

9. All arbitrators shall:

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

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

(c) be independent of, and not be affiliated with or take instructions from, either Party.

10. If the Parties agree that an arbitrator has failed to comply with the Code of Conduct referred to in Article 19.16, they may remove the arbitrator, waive the violation or request the arbitrator to take steps within a specified period of time to ameliorate the violation. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the arbitrator may continue to serve.

11. If an arbitrator appointed in accordance with this Article dies, resigns or becomes unable to act, including as a result of his or her removal in accordance with paragraph 10, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator.

12. Where an arbitral tribunal is reconvened in accordance with Article 19.14 or 19.15, the reconvened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and shall have all the powers and duties of the original arbitrator.

Article 19.7
Terms of Reference of Arbitral Tribunals

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

"To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 19.6, to make findings of law and fact together with the reasons therefor and to issue an award for the resolution of the dispute."

Article 19.8
Functions of Arbitral Tribunals

The arbitral tribunal established in accordance with Article 19.6:

(a) should consult the Parties, as appropriate, and provide adequate opportunities for the development of a mutually satisfactory solution;

(b) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case, the applicability of the provisions of this Agreement cited by the Parties, and:

(i) the consistency with this Agreement of the measure at issue applied by the Party complained against;

(ii) whether the Party complained against has failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4; and

(c) may make such other findings as necessary for the resolution of the dispute.

Article 19.9
Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session. If the Parties agree, meetings with the Parties may be open to the public.

2. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

3. Notwithstanding paragraph 2, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions provided by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, on request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

4. Each Party shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings and to set out in writing the facts of its case, its arguments and counter-arguments. Any information or written submissions provided by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

5. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus, but may also make such decisions, including its award, by majority vote.

6. The period for the arbitral tribunal proceedings, from the date of its establishment until the date on which it issues its award to the Parties, shall not exceed six months, unless the Parties otherwise agree.

7. After consulting the Parties, the arbitral tribunal shall, as soon as practicable and whenever possible within 10 days after the date of its establishment, fix the timetable for its proceedings, taking into account any applicable time-frames specified in this Chapter and the Indicative Timetable referred to in Article 19.16. On request of the Parties, modifications to such timetable may be made by the arbitral tribunal.

8. Any time period applicable to the proceedings of the arbitral tribunal shall be suspended for a period that begins on the date on which any arbitrator becomes unable to act and ends on the date on which the successor is appointed.

Article 19.10
Information in Proceedings

1. The arbitral tribunal may seek from the Parties such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information.

2. On its own initiative unless the Parties disapprove, or on request of a Party, the arbitral tribunal may obtain information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. However, before doing so the arbitral tribunal shall seek the views of the Parties.

3. Subject to paragraph 2, where the dispute raises factual issues concerning a scientific or other technical matter, the arbitral tribunal may, on its own initiative unless the Parties disapprove, or on request of a Party, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award. Where two suitable scientific or technical experts are not available, the arbitral tribunal may, after consulting the Parties, select only one expert.

4. Where the arbitral tribunal obtains information or technical advice from any individual or body other than the Parties, it shall provide the Parties with a copy of any information or technical advice it receives and an opportunity to provide comments on the information or technical advice. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its award, it shall also take into account any comments by the Parties.

Article 19.11
Suspension and Termination of Proceedings

1. The arbitral tribunal may suspend its work on request of the complaining Party, and with the consent of the Party complained against, at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraph 7 of Article 19.9 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time on request of either Party. If the work of the arbitral tribunal has been suspended for more than 12 consecutive months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties by jointly notifying the chair of the arbitral tribunal.

3. Notwithstanding paragraph 2, for the purpose of initiating a new dispute settlement procedure in another forum in accordance with subparagraph 2(c) of Article 19.3, the complaining Party may terminate the proceedings of the arbitral tribunal by notifying the Party complained against and the chair of the arbitral tribunal of such intention.

Article 19.12
Award

1. The arbitral tribunal shall make its award based on the relevant provisions of this Agreement, applicable rules of interpretation under international law, the submissions and arguments of the Parties, and any information it has obtained in accordance with Article 19.10.

2. The award of the arbitral tribunal shall include:

(a) a descriptive part covering the factual background to the dispute;

(b) its findings on the facts of the case, the applicability of the provisions of this Agreement cited by the Parties, and:

(i) the consistency with this Agreement of the measure at issue applied by the Party complained against;

(ii) whether the Party complained against has failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4; and

(c) the reasons for such findings.

3. The arbitral tribunal may also include in its award:

(a) any other findings necessary for the resolution of the dispute, in accordance with subparagraph (c) of Article 19.8; and

(b) suggested implementation options for the Parties to consider, if requested by either Party.

4. The findings and suggestions of the arbitral tribunal in its award shall not add to or diminish the rights and obligations of the Parties under this Agreement or any other international agreement.

5. The award of the arbitral tribunal shall be drafted without the presence of the Parties. Any opinions expressed in the award by individual arbitrators shall be anonymous.

6. The arbitral tribunal shall submit to the Parties its draft award meeting the requirements specified in paragraph 2, at least 30 days prior to the date set by the arbitral tribunal in accordance with paragraph 7 of Article 19.9 for issuance of its award, for the purpose of enabling the Parties to review it. Either Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award. The arbitral tribunal shall include in its award its analysis of any comments made by the Parties on the draft award.

7. Unless the Parties otherwise agree, either Party may make the award of the arbitral tribunal publicly available seven days after the date of its issuance to the Parties, subject to paragraphs 2 and 3 of Article 19.9.

8. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 19.13
Implementation of Award

1. The Party complained against shall:

(a) where the award of the arbitral tribunal contains a finding of inconsistency of the measure at issue applied by the Party complained against with this Agreement, bring such measure into conformity with this Agreement;

(b) where the award of the arbitral tribunal contains a finding that the Party complained against has failed to carry out its obligations under this Agreement, carry out such obligations; or

(c) where the award of the arbitral tribunal contains a finding that the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4, address such nullification or impairment or reach a mutually satisfactory solution.

2. If it is impracticable to comply promptly with paragraph 1, the Party complained against shall have a reasonable period of time in which to do so. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the reasonable period of time that it considers necessary for compliance.

3. If it is required, any reasonable period of time necessary to comply with paragraph 1 shall, whenever possible, 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 award, either Party may request the chair of the arbitral tribunal appointed in accordance with Article 19.6 to determine the reasonable period of time.

4. Where a request is made in accordance with paragraph 3, the chair of the arbitral tribunal shall present the Parties with a determination of the reasonable period of time and the reasons for such determination within 45 days after the date of receipt of the request. Prior to making this determination, the chair of the arbitral tribunal may, on its own initiative, or shall, on request of either Party, seek written submissions from the Parties, and if requested by either Party, shall hold a meeting with the Parties where each Party will be given an opportunity to present its submission. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 12 months from the date of issuance of the award. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

Article 19.14
Disagreement Concerning Implementation

1. Where there is disagreement as to whether the Party complained against has complied with paragraph 1 of Article 19.13, such dispute shall be decided through recourse to an arbitral tribunal reconvened for this purpose.

2. The complaining Party may request in writing to the Party complained against the reconvening of the arbitral tribunal referred to in paragraph 1 after the earlier of:

(a) the expiry of the reasonable period of time determined in accordance with Article 19.13; or

(b) a notification by the Party complained against that it has complied with paragraph 1 of Article 19.13.

3. Any request for the reconvening of the arbitral tribunal pursuant to this Article shall provide a brief summary of the factual basis for the complaint, including the reason why the complaining Party considers that the Party complained against has not complied with paragraph 1 of Article 19.13.

4. When a request is made by the complaining Party in accordance with paragraphs 1 through 3, the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request. The period for the reconvened arbitral tribunal proceedings, from the date of its reconvening until the date on which it issues its award to the Parties, shall not exceed four months, unless the Parties otherwise agree.

5. The reconvened arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any action taken by the Party complained against to comply with paragraph 1 of Article 19.13; and

(b) whether the Party complained against has complied with paragraph 1 of Article 19.13.

6. The award of the reconvened arbitral tribunal shall include:

(a) a descriptive part covering the factual background to the dispute arising under this Article;

(b) its findings on the facts of the dispute arising under this Article, particularly on whether the Party complained against has complied with paragraph 1 of Article 19.13; and

(c) the reasons for such findings.

7. The reconvened arbitral tribunal may also include in its award:

(a) any other findings necessary for the resolution of the dispute arising under this Article; and

(b) suggested implementation options for the Parties to consider, if requested by either Party.

8. The reconvened arbitral tribunal shall submit to the Parties its draft award meeting the requirements specified in paragraph 6, at least 30 days prior to the date set by the reconvened arbitral tribunal in accordance with paragraph 7 of Article 19.9 for issuance of its award, for the purpose of enabling the Parties to review it. Either Party may submit comments in writing to the reconvened arbitral tribunal on the draft award within 15 days after the date of submission of the draft award. The reconvened arbitral tribunal shall include in its award its analysis of any comments made by the Parties on the draft award.

9. With respect to the terms of reference, functions and proceedings of the arbitral tribunal reconvened in accordance with this Article, Article 19.7, Article 19.8 other than subparagraph (b), Article 19.9 other than paragraph 6, Article 19.10, Article 19.11 other than paragraph 3, and Article 19.12 other than paragraphs 2, 3 and 6, shall apply *mutatis mutandis*.

Article 19.15
Compensation and Suspension of Concessions

1. The Party complained against shall, on request of the complaining Party, enter into consultations with the complaining Party with a view to developing mutually acceptable compensation, where:

(a) the Party complained against has notified the complaining Party that it considers it impracticable to comply with paragraph 1 of Article 19.13 within the reasonable period of time determined in accordance with Article 19.13;

(b) the Party complained against has notified the complaining Party of its failure to comply with paragraph 1 of Article 19.13 within the reasonable period of time determined in accordance with Article 19.13; or

(c) the failure of the Party complained against to comply with paragraph 1 of Article 19.13 has been established by the reconvened arbitral tribunal in accordance with Article 19.14.

2. If mutually acceptable compensation has not been agreed within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may notify the Party complained against in writing that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement, and shall have the right to begin the suspension 30 days after the date of the notification. The level of such suspension shall be:

(a) equivalent to the level of nullification or impairment of any benefit that is attributable to the failure of the Party complained against to comply with paragraph 1 of Article 19.13; and

(b) restricted to the same sector or sectors to which the nullification or impairment of benefit relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

3. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to suspend concessions or other obligations under paragraph 2 where:

(a) a review of the proposed level of suspension of concessions or other obligations is being undertaken in accordance with paragraph 4 or 5;

(b) the Party complained against has notified the complaining Party that it complied with paragraph 1 of Article 19.13 after any of the circumstances referred to in paragraph 1, and the complaining Party has expressed its agreement that the Party complained against has complied with paragraph 1 of Article 19.13; or

(c) a mutually agreed solution has been reached.

4. The complaining Party shall specify, in the notification made in accordance with paragraph 2, the level of suspension of concessions or other obligations that it proposes. If the Party complained against objects to the level of suspension proposed, it may request consultations with the complaining Party within 30 days after the date of receipt of the notification. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter.

5. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with paragraph 4, the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request and shall issue, within 45 days after the date on which it is reconvened, its award containing a determination on the appropriate level of suspension to be applied by the complaining Party.

6. The suspension of concessions or other obligations under paragraph 2 shall be temporary and shall only be applied until it is agreed between the Parties in the manner specified in subparagraph 3(b) or established by the reconvened arbitral tribunal in accordance with paragraph 9, that the Party complained against has complied with paragraph 1 of Article 19.13, or a mutually agreed solution is reached.

7. In a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with this Article:

(a) if the Party complained against considers that the level of concessions or other obligations suspended by the complaining Party is manifestly excessive, it may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter; and

(b) if the Party complained against considers that it has complied with paragraph 1 of Article 19.13, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this subparagraph, the Party complained against may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter.

8. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with subparagraph 7(a), the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request and shall issue, within 45 days after the date on which it is reconvened, its award containing a determination on the appropriate level of suspension to be applied by the complaining Party.

9. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with subparagraph 7(b), the arbitral tribunal shall be reconvened and shall issue its award, applying, *mutatis mutandis*, paragraphs 3 through 8 of Article 19.14. In the event of a finding that the Party complained against has not complied with paragraph 1 of Article 19.13, the reconvened arbitral tribunal may also, on request of either Party, examine whether the level of the existing suspension of concessions or other obligations is still appropriate and, if not, provide a determination on the appropriate level of suspension.

10. With respect to the terms of reference, functions and proceedings of the arbitral tribunal reconvened in accordance with this Article, Article 19.7, Article 19.8 other than subparagraph (b), Article 19.9 other than paragraph 6, Article 19.10, Article 19.11 other than paragraph 3, and Article 19.12 other than paragraphs 2, 3 and 6, shall apply *mutatis mutandis*.

Article 19.16
Rules of Procedure

1. The Joint Committee shall adopt the Rules of Procedure, including the Indicative Timetable and Code of Conduct, upon the entry into force of this Agreement. The Rules of Procedure provide the details of the rules and procedures of arbitral tribunals established under this Chapter.

2. Unless the Parties otherwise agree, the arbitral tribunal shall follow the Rules of Procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the Rules of Procedure adopted by the Joint Committee.

3. Where an arbitral tribunal is reconvened in accordance with Article 19.14 or 19.15, it may, after consulting the Parties, determine the rules of procedure for the proceedings, drawing as it deems appropriate on the Rules of Procedure adopted by the Joint Committee in accordance with paragraph 1.

Article 19.17
Modifications of Time Periods, Rules and Procedures

Any time period or other rules and procedures for arbitral tribunals provided for in this Chapter, including the Rules of Procedure referred to in Article 19.16, may be modified for a particular dispute by the arbitral tribunal established for that particular dispute, provided that the Parties consent to such modifications.

Article 19.18
Expenses

Unless the Parties otherwise agree, the expenses of an arbitral tribunal, including the remuneration of the arbitrators, shall be borne by the Parties in equal shares.

CHAPTER 20
FINAL PROVISIONS

Article 20.1
Table of Contents and Headings

The table of contents and headings of the Chapters, Sections and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 20.2
Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 20.3
Amendment

1. This Agreement may be amended by written agreement between the Parties.

2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures and shall enter into force on the date to be agreed by the Parties.

Article 20.4
Entry into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 20.6.

Article 20.5
General Review

Unless the Parties otherwise agree, the Parties shall undertake a general review of the implementation and operation of this Agreement in the sixth year following the date of entry into force of this Agreement, or at any time agreed by the Parties.

Article 20.6
Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

Article 20.7
Authentic Texts

1. The texts of this Agreement in the Japanese and English languages shall be equally authentic.

2. Notwithstanding paragraph 1, Part 2 of Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), Part 1 of Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10), Part 1 of Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10), Part 1 of Annex 10 (Specific Commitments on the Movement of Natural Persons) and Part 1 of Annex 13 (Government Procurement) are written only in the English language.

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

DONE at Canberra on this eighth day of July in the year 2014, in duplicate in the Japanese and English languages.

For Japan:

安倍晋三

For Australia:

Tony Abbott

IMPLEMENTING AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF AUSTRALIA PURSUANT TO ARTICLE 1.12 OF THE AGREEMENT BETWEEN JAPAN AND AUSTRALIA FOR AN ECONOMIC PARTNERSHIP

TABLE OF CONTENTS

PREAMBLE

The Government of Japan and the Government of Australia (hereinafter referred to as "the Parties"),

In accordance with Article 1.12 (General Provisions - Implementing Agreement) of the Agreement between Japan and Australia for an Economic Partnership (hereinafter referred to as "the Basic Agreement"),

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

Article 1.1
Scope and Relationship to the Basic Agreement

1. This Agreement sets out the details and procedures for the implementation of certain provisions of the Basic Agreement.

2. Unless otherwise provided for in this Agreement, the definitions set out in the Basic Agreement shall apply to this Agreement, *mutatis mutandis*.

3. Chapter 19 (Dispute Settlement) of the Basic Agreement shall apply *mutatis mutandis* with respect to the settlement of disputes between the Parties concerning the implementation, interpretation or application of this Agreement.

CHAPTER 2
RULES OF ORIGIN

Article 2.1
Issuance of Certificate of Origin

1. Signatures of the representatives of the authorised body of the exporting Party or its other certification bodies on a Certificate of Origin shall be autographed or electronically printed. Stamps or official seals of the authorised body or other certification bodies may be printed electronically as well.

2. In principle, a Certificate of Origin shall be issued by the time of shipment.

3. In exceptional cases where the Certificate of Origin has not been issued by the time of shipment, on request of the exporter or producer, the Certificate of Origin may be issued retrospectively in accordance with the domestic laws and regulations of the exporting Party within 12 months from the date of shipment, in which case it shall be necessary to indicate "ISSUED RETROSPECTIVELY" in the relevant field of the Certificate of Origin. The Certificate of Origin issued retrospectively shall indicate the date of shipment in the relevant field of the Certificate of Origin.

4. A Certificate of Origin issued retrospectively shall remain valid for one year from the date of shipment.

5. In the event of theft, loss or destruction of an issued Certificate of Origin before the expiration of its validity, the exporter, the producer or their authorised representative may request the authorised body of the exporting Party or its other certification bodies to issue a new Certificate of Origin as a duplicate of the original Certificate of Origin on the basis of the documents in their possession. The Certificate of Origin issued in this way shall bear the word "DUPLICATE OF THE ORIGINAL CERTIFICATE OF ORIGIN NUMBER_DATED_" in the relevant field of the Certificate of Origin. The date of issuance of the original Certificate of Origin shall be indicated in the new Certificate of Origin. The new Certificate of Origin shall be valid during the term of the validity of the original Certificate of Origin.

Article 2.2
Modification

1. In case a Documentary Evidence of Origin contains incorrect information:

(a) the exporter, producer or their authorised representative may request the issuance of a new Certificate of Origin and the invalidation of the original Certificate of Origin; or

(b) the importer, exporter, or producer may complete a new origin certification document and withdraw the original origin certification document.

2. Notwithstanding paragraph 1(a), the authorised body of the exporting Party or its other certification bodies may, in response to the request for the issuance of a new Certificate of Origin or at their own initiative, make modifications to the Certificate of Origin by striking out errors and making any additions required. Such modifications shall be certified by the authorised signature and stamp or official seal of the authorised body of the exporting Party or its other certification bodies.

3. Erasures, superimpositions and modifications other than those referred to in paragraph 2 shall not be allowed on the issued Certificate of Origin.

Article 2.3
Language of Documentary Evidence of Origin

1. The Documentary Evidence of Origin shall be completed in the English language.

2. Notwithstanding paragraph 1, in the case of importation into Japan, an importer may complete an origin certification document in the Japanese language.

Article 2.4
Consignment

For the purposes of subparagraph (a) of Article 3.8 (Rules of Origin - Consignment) of the Basic Agreement, in case a good undergoes repacking, relabeling or splitting up, an importer shall provide, on request of the customs administration of the importing Party, a Documentary Evidence of Origin which is consistent with the state of consignment after such operations.

Article 2.5
Minor Errors

The customs administration of the importing Party shall disregard minor errors, such as slight discrepancies or omissions, typing errors or protrusions from the designated field, provided that these minor errors are not such as to create doubts concerning the accuracy of the information included in the Documentary Evidence of Origin.

Article 2.6
Communications on Origin Verification

1. For the purposes of Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement, communication between the customs administration of the importing Party and the exporters, the producers, the authorised body or the customs administration of the exporting Party shall be made through diplomatic channels unless otherwise agreed by the Parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement, the customs administration of the importing Party may communicate with the authorised body or the customs administration of the exporting Party and the exporter or the producer of the good who applied for the Certificate of Origin or completed the origin certification document, by any method with a confirmation of receipt, in parallel with the communications set out in paragraph 1.

3. Notwithstanding paragraphs 1 and 2, the customs administration of Australia may access the EPA CO Reference System provided by the Ministry of Economy, Trade and Industry of Japan for the purposes of verifying the authenticity of Certificates of Origin issued in Japan.

4. The language to be used for communications between the Parties in accordance with Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement shall be English.

CHAPTER 3
CUSTOMS PROCEDURES

Article 3.1
Mutual Assistance

1. To the extent permitted by the competence and available resources of their respective customs administrations, the Parties shall assist each other through their customs administrations to ensure proper application of customs laws, and to prevent, investigate and combat any violation or attempted violation of customs laws.

2. The Parties shall cooperate through their customs administrations, when necessary and appropriate, in the area of research, development, and testing of new customs procedures and new enforcement aids and techniques, training activities of customs officers, and exchange of personnel between them.

Article 3.2
Information and Communications Technology

1. The customs administrations of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures, including possible electronic data interchange between the customs administrations, taking into account international standards or methods developed under the auspices of international organisations or fora such as the Customs Cooperation Council, the International Organization for Standardization, and the United Nations Centre for Trade Facilitation and Electronic Business.

2. The customs administrations of the Parties shall exchange information, including best practices, on the use of information and communications technology for the purpose of improving customs procedures.

3. The introduction and enhancement of individual information and communications technology by the customs administrations of the Parties shall, to the greatest extent possible, be carried out taking into account the views expressed by relevant parties.

Article 3.3
Risk Management

1. In order to facilitate customs clearance of goods traded between Australia and Japan, the customs administrations of the Parties shall continue to use risk management and promote the improvement of risk management techniques.

2. The customs administrations of the Parties shall exchange information, including best practices, on risk management techniques and other enforcement techniques.

Article 3.4
Advance Rulings

1. For the purposes of paragraph 2 of Article 4.5 (Customs Procedures - Advance Rulings) of the Basic Agreement, procedures for issuing advance rulings shall ensure that:

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

(b) the customs administration of the importing Party is allowed to request, at any time during the course of the evaluation of the application for an advance ruling, the applicant to provide additional information deemed necessary for such evaluation;

(c) an advance ruling is based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the customs officers responsible for the issuance of the advance rulings;

(d) the customs administration of the importing Party endeavours to issue an advance ruling within 30 days, or 90 days for customs valuation, from the date of receipt of the application with all the necessary information, and in cases where the customs administration of the importing Party fails to issue the advance ruling within the aforementioned 30 or 90 days, the applicant is informed accordingly;

(e) an issued advance ruling is provided in writing and includes the reasons for the ruling; and

(f) the conditions for the use of an issued advance ruling, such as the period of validity thereof, are specified.

2. For the purposes of paragraph 4 of Article 4.5 (Customs Procedures - Advance Rulings) of the Basic Agreement, the customs administration of the importing Party may modify or revoke the issued advance ruling in the following cases:

(a) if the advance ruling has been issued based on erroneous facts or the applicant for the advance ruling omitted to provide all relevant information;

(b) if there has been a change in the law, facts or circumstances on which the issued advance ruling was based;

(c) if there has been an amendment of the Basic Agreement or this Agreement which affects the issued advance ruling, since the issuance of the ruling;

(d) if there has been a change in the procedures relating to advance rulings which affects the issued advance ruling, since the issuance of the ruling, provided that such change is not inconsistent with the provisions of the Basic Agreement and this Agreement, including the requirements specified in paragraph 1; or

(e) if the customs administration of the importing Party has other reasonable grounds to modify or revoke the issued advance ruling.

Article 3.5
Enforcement Against Illegal Trafficking

1. The Parties shall, to the extent permitted by the competence and available resources of their respective customs administrations, cooperate and exchange information in their enforcement against:

(a) the trafficking of illicit drugs and other prohibited goods; and

(b) the illegal trafficking of controlled goods.

2. The Parties shall endeavour to promote regional cooperation under the Customs Cooperation Council in combating trafficking of illicit drugs and other prohibited goods.

Article 3.6
Intellectual Property Rights

The customs administrations of the Parties shall, within their respective competence and available resources, cooperate and exchange information in the application of border measures under the provisions of Article 16.18 (Intellectual Property - Enforcement - Border Measures) of the Basic Agreement.

Article 3.7
Exchange of Information and Confidentiality

1. Neither Party shall use or disclose information provided pursuant to this Chapter except for the purpose of discharging the functions of its customs administration in accordance with its customs laws, or otherwise with the consent of the providing customs administration.

2. Each Party may limit the information it communicates to the other Party when the other Party is unable to give the assurance requested by the former Party with respect to the maintenance of confidentiality or the limitations of purposes for which the information will be used.

3. If a Party that requests information would be unable to comply with a similar request in case such a request were made by the other Party, the requesting Party shall draw attention to that fact in its request. Responding to such a request shall be at the discretion of the other Party.

4. Information provided by the customs administration of a Party to the customs administration of the other Party pursuant to this Chapter shall not be used by the other Party in criminal proceedings carried out by a court or a judge, unless the other Party has obtained prior written consent of the customs administration which provided the information.

5. Nothing in paragraph 4 shall prevent a Party from submitting a request for such information to the other Party through diplomatic channels or other channels established in accordance with the domestic laws and regulations of the other Party.

6. This Article shall not preclude the use or disclosure of information provided pursuant to this Chapter to the extent such use or disclosure is required by the domestic laws and regulations of the Party of the customs administration receiving the information. Such customs administration shall, wherever possible, give advance notice of any such disclosure to the customs administration providing the information.

7. The Parties may refuse to communicate information pursuant to this Chapter, where to do so would:

(a) be likely to prejudice sovereignty, public policy, security or other essential interests;

(b) violate or prejudice a legitimate industrial, commercial or professional interest;

(c) be contrary to the domestic laws and regulations of the Party receiving the request for information; or

(d) impede law enforcement.

CHAPTER 4
FINAL PROVISIONS

Article 4.1
Implementation

This Agreement shall be implemented by the Parties in accordance with the Basic Agreement and their respective domestic laws and regulations in force.

Article 4.2
Entry into Force

This Agreement shall enter into force at the same time as the Basic Agreement and shall remain in force as long as the Basic Agreement remains in force.

Article 4.3
Amendment

This Agreement may be amended by written agreement between the Parties. The Parties shall, on request of a Party, consult as to whether to amend this Agreement.

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

DONE at Canberra on this eighth day of July in the year 2014, in duplicate in the Japanese and English languages, both texts being equally authentic.

For the Government of Japan:	For the Government of Australia:
安倍晋三	Tony Abbott

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