

COMPREHENSIVE ECONOMIC
PARTNERSHIP AGREEMENT

BETWEEN

THE REPUBLIC OF INDONESIA

AND

THE EFTA STATES

PREAMBLE

Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as the “EFTA States”),

and

The Republic of Indonesia,

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

RECOGNISING the common wish to strengthen the links between the EFTA States and Indonesia by establishing this Comprehensive Economic Partnership Agreement (hereinafter referred to as “Agreement”) based on the principles of sovereign equality, mutual respect, constructive spirit and common benefit;

ACKNOWLEDGING the importance of cooperation and capacity building, based on the Parties’ capabilities, with a view to promoting the implementation of this Agreement;

REAFFIRMING their commitment to the principles and objectives set out in the United Nations Charter and the Universal Declaration of Human Rights, including democracy, the rule of law, human rights and fundamental freedoms;

RECOGNISING that economic development, social development, and environmental protection are interdependent and mutually supportive components of sustainable development;

REAFFIRMING their commitment to support and promote the development objectives of the United Nations 2030 Agenda for Sustainable Development, including the objective to eradicate poverty in all its forms and dimensions, and the need for holistic and integrated approaches to achieve economic growth, social development and environmental sustainability, at national, regional and global levels, and recalling in this context their rights and obligations under applicable environmental agreements and those deriving from membership of the International Labour Organisation (hereinafter referred to as the “ILO”);

DETERMINED to implement this Agreement in line with the objective to preserve and protect the environment through sound environmental management and to promote an optimal use of the world’s natural resources in accordance with the objective of sustainable development;

AIMING at creating new employment opportunities, improving living standards and raising levels of protection of health and safety and of the environment;

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

RECOGNISING the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and to ensure predictability for the trading communities of the Parties;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (hereinafter referred to as the “WTO Agreement”) and the other agreements concluded thereunder, thereby contributing to the harmonious development and expansion of world trade;

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

ACKNOWLEDGING the importance of the Paris Declaration on Aid Effectiveness;

ACKNOWLEDGING the importance of good corporate governance and corporate social responsibility for sustainable development, and affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the UN Global Compact;

CONVINCED that this Agreement, along with the cooperation and capacity building projects undertaken in conjunction with it, will enhance the competitiveness of their enterprises, including small and medium enterprises in global markets and create conditions encouraging economic, trade and investment relations between them;

DETERMINED to establish a legal framework for a comprehensive economic partnership between the Parties;

HEREBY AGREE, in pursuit of the above, to conclude this Agreement:

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Establishment of a Comprehensive Economic Partnership

The Parties hereby establish a comprehensive economic partnership, including a free trade area, by means of this Agreement, which is based on trade relations between market economies, with a view to contributing to the harmonious development and expansion of world trade and to spurring prosperity and sustainable development.

ARTICLE 1.2

Objectives

The objectives of this Agreement are:

- (a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “GATT 1994”);
- (b) to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as the “GATS”);
- (c) to mutually enhance investment opportunities;
- (d) to ensure adequate and effective protection of intellectual property rights, in accordance with international standards;
- (e) to enhance cooperation and explore possible liberalisation in the field of government procurement;
- (f) to promote fair competition in their economies, particularly as it relates to economic relations between the Parties;
- (g) to ensure cooperation and capacity building in order to enhance and expand the benefits of this Agreement, thereby reducing poverty and fostering competitiveness and sustainable economic development; and
- (h) to develop international trade in such a way as to contribute to the objective of sustainable development as it is integrated and reflected in the Parties’ trade relations.

ARTICLE 1.3

Geographical Scope

1. Except as otherwise specified in Annex I (Rules of Origin and Administrative Cooperation), this Agreement shall apply:
 - (a) to the land territory, internal waters, archipelagic waters and the territorial sea of a Party, and the air-space above the territory of a Party, in accordance with international law including the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982; and
 - (b) beyond the territorial sea, with respect to measures taken by a Party in the exercise of its sovereign rights and jurisdiction in accordance with international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.
2. This Agreement shall not apply to the Norwegian territory of Svalbard, with the exception of trade in goods.

ARTICLE 1.4

Economic Partnership Governed by this Agreement

1. This Agreement shall apply to Indonesia on the one side and the individual EFTA States on the other side but not to the trade and economic relations between individual EFTA States, unless otherwise provided for in this Agreement.
2. In accordance with the Customs Treaty of 29 March 1923 between Switzerland and Liechtenstein, Switzerland shall represent Liechtenstein in matters covered thereby.

ARTICLE 1.5

Relationship to Other International Agreements

1. The Parties confirm their rights and obligations under the WTO Agreement and the other agreements concluded thereunder to which they are a party, and any other international agreements to which they are a party.
2. If a Party considers that the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade or other preferential agreements by another Party has the effect of altering the trade regime provided for by this Agreement, it may request consultations. The Party concluding such agreement shall afford adequate opportunity for consultations with the requesting Party.

3. If any international agreement, referred to in this Agreement is amended, the Parties may consult on whether it is necessary to amend this Agreement.

ARTICLE 1.6

Fulfilment of Obligations

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

ARTICLE 1.7

Transparency and Confidential Information

1. Laws, regulations, judicial decisions, administrative rulings of general application of the Parties, as well as their respective international agreements, that may affect the operation of this Agreement, shall be published or otherwise made publicly available by the Parties.

2. Each Party shall respond to a request with respect to specific questions, and provide information requested by another Party on matters referred to in paragraph 1 in a timely manner.

3. Nothing in this Agreement shall require any Party to disclose confidential information that would impede law enforcement, or otherwise be contrary to the public interest or that would prejudice the legitimate commercial interests of any economic operator.

4. Each Party shall treat as confidential the information submitted by another Party, which has been designated as confidential by the Party submitting the information.

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

ARTICLE 1.8

Taxation Exception

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of a Party under a tax convention applicable between the relevant EFTA State and Indonesia. In the event of any inconsistency between this Agreement and any such tax convention, that tax convention shall prevail to the extent of the inconsistency. The competent authorities under that tax convention shall have the sole responsibility to determine whether an inconsistency exists between this Agreement and that tax convention.

3. Notwithstanding paragraph 1, the provisions referred to hereafter shall apply to taxation measures:

(a) Article 2.9 (Internal Taxation and Regulations) and such other provisions of this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994; and

(b) Articles 3.16 (General Exceptions) and 4.11 (General Exceptions) to the same extent as does Article XIV of the GATS.

4. For the purposes of this Article, taxation measures do not include any import duties as defined in Article 2.2 (Import Duties) nor export duties as defined in Article 2.3 (Export Duties).

CHAPTER 2
TRADE IN GOODS

ARTICLE 2.1

Scope

This Chapter shall apply to trade in goods between the Parties.

ARTICLE 2.2

Import Duties

1. Each Party shall apply import duties on goods originating in another Party in accordance with Annexes II to V (Schedules on Tariff Commitments on Goods).
2. Unless otherwise provided in this Agreement, no Party shall increase import duties, or introduce new import duties, on goods originating in another Party covered by Annexes II to V (Schedules on Tariff Commitments on Goods).
3. For the purposes of this Agreement, “import duties” means any customs duties and charges of any kind, including taxes and surcharges, imposed in connection with the importation of goods, except duties and charges imposed in conformity with Articles III and VIII of the GATT 1994 as well as anti-dumping duties that are applied pursuant to Article VI of the GATT 1994 and in accordance with Article 2.15 (Anti-dumping Measures).

ARTICLE 2.3

Export Duties

If a Party agrees with a non-party to abolish or limit export duties, it shall, upon request by another Party, accord treatment no less favourable to the other Party.

ARTICLE 2.4

Rules of Origin and Administrative Cooperation

The rules of origin and administrative cooperation are set out in Annex I (Rules of Origin and Administrative Cooperation).

ARTICLE 2.5

Customs Valuation¹

Article VII of the GATT 1994 and Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.6

Import Licensing

1. The WTO Agreement on Import Licensing Procedures shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. In adopting or maintaining import licensing procedures, the Parties shall implement such procedures consistent with this Agreement. In particular, each Party shall ensure that import licensing procedures are implemented in a transparent, non-discriminatory fair and equitable, predictable and least trade-restrictive manner.
3. Subject to the domestic laws and regulations of the importing Party, if the license application is not approved, the applicant shall without undue delay be given the reason in writing and shall have a right to appeal in at least one level of administrative or judicial appeal, and be given a written justification without undue delay if the non-approval is upheld following such appeal.
4. Upon entry into force of this Agreement, each Party shall promptly notify the other Parties of existing import licensing procedures. Each Party shall promptly notify any new import licensing procedures as well as modifications to existing import licensing procedures. Such notification shall include information on the administrative purpose of such licensing procedures and shall be in accordance with Articles 5.2 and 5.3 of the WTO Agreement on Import Licensing Procedures.
5. Each Party shall promptly respond to requests for information on import licensing requirements by another Party.
6. The Parties shall exchange contact points responsible for the issuance of import licenses in order to facilitate communication and exchange of information on a regular basis.

¹ Switzerland applies customs duties based on weight and quantity rather than *ad valorem* duties.

ARTICLE 2.7

Quantitative Restrictions

1. Article XI of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. No Party may adopt or maintain any prohibition or restriction on the importation of a product of another Party or on the exportation of a product to another Party, except for measures in accordance with paragraph 2 of Article XI of the GATT 1994.
3. A Party introducing a measure in accordance with paragraph 2 of Article XI of the GATT 1994 shall promptly notify the Joint Committee. A notification by a Party in accordance with Article XI of the GATT 1994 shall be deemed equivalent to a notification under this Agreement.
4. Any measure applied in accordance with this Article shall be temporary and may not go beyond what is necessary to deal with the circumstances described in paragraph 2. The Parties shall endeavour to terminate measures no later than three years after their imposition.
5. Each Party shall ensure non-discriminatory administration and transparency of its measures in accordance with paragraph 2 of Article XI of the GATT 1994 and that 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 2.8

Fees and Formalities

Article VIII of the GATT 1994 shall apply, and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*, subject to Article 9 (Fees and Charges) of Annex VI (Trade Facilitation).

ARTICLE 2.9

Internal Taxation and Regulations

Article III of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.10

Agricultural Export Subsidies

No Party may adopt or maintain export subsidies, as defined in the WTO Agreement on Agriculture, in connection with the exportation of agricultural products to another Party.

ARTICLE 2.11

Standards, Technical Regulations and Conformity Assessment Procedures

1. Except as otherwise provided for in this Article, with respect to standards, technical regulations and conformity assessments, the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the “TBT Agreement”) shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The Parties shall exchange names and addresses of contact points with expertise on technical regulations in order to facilitate communication and exchange of information.
3. The Parties agree to hold technical consultations if a Party considers that another Party has applied or is considering applying a measure not in conformity with the TBT Agreement, in order to find an appropriate solution in conformity with the TBT Agreement. Such consultations, which may be held within or outside the framework of the Joint Committee, shall take place within 40 days from the date of receipt of the request. If consultations are held outside the framework of the Joint Committee, it should be informed thereof. Such consultations may be conducted by any agreed method.
4. Upon request of a Party, the Parties shall, without undue delay, agree on an arrangement extending to each other equivalent treatment related to technical regulations, standards and conformity assessments mutually agreed between each Party and a non-party.
5. The Parties may amend this Agreement or conclude other agreements to prevent, eliminate, or reduce technical barriers to trade, including mutual recognition agreements designed to avoid duplicative and unnecessarily burdensome conformity assessment procedures in specific product sectors.

ARTICLE 2.12

Sanitary and Phytosanitary Measures

1. Except as otherwise provided for in this Article, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the “SPS Agreement”) shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. An importing Party shall ensure free movement of goods complying with its relevant sanitary and phytosanitary requirements and applicable domestic laws and regulations once placed on its market. Sanitary and phytosanitary requirements and domestic laws and regulations shall be applied in a non-discriminatory manner.
3. The Parties agree to use system audits as the preferred assessment method. The need to perform on-site inspections shall be justified and agreed by the Parties.
4. The Parties agree to minimise the number of model SPS-certificates as far as possible. Where official certificates are required, these should be in line with the principles laid down in international standards. When a Party introduces or modifies a certificate, information on the proposed new or revised certificate shall be notified, in English, as early as possible. The Parties shall explain and justify introduction or modification of a certificate. The exporting Party shall be given sufficient time to adapt to the new requirements.
5. Import control should be carried out according to international standards, guidelines and recommendations issued by the relevant international organisations, such as Codex Alimentarius Commission (CAC), including Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE).
6. The import requirements and checks applied to imported products covered by this Article shall be based on the risk that is associated with such products and shall be applied in a non-discriminatory manner. Import checks and border controls shall be carried out as expeditiously as possible in a manner that is no more trade-restrictive than necessary.
7. Information about the frequency of import checks or changes in this frequency shall be exchanged upon request between competent authorities.
8. Each Party shall ensure that adequate procedures exist to allow the person or entity responsible for the consignment whose goods are subject to sampling and analysis to apply for a supplementary expert opinion as part of the official sampling.
9. Products subject to random and routine checks upon importation should be cleared while awaiting results of the tests if no perceived or verified risk is associated with the products.

10. If a product is detained at the border due to a perceived risk, the clearance decision shall be issued as soon as possible. Every effort shall be made to avoid deterioration of perishable goods.²

11. If a product is rejected at a port of entry due to a verified serious sanitary or phytosanitary issue, the competent authority in the exporting Party shall be informed immediately. The factual basis and scientific justification shall, upon request, be provided to the exporting Party in writing, as soon as possible, but no later than within 14 days.

12. Where a Party detains, at a port of entry, a product exported from another Party due to a perceived failure to comply with a sanitary or phytosanitary measure, the factual justification for the detention shall be promptly notified to the person or entity responsible for the consignment. If a product is rejected at a port of entry, each Party shall ensure that appropriate administrative or legal procedures exist to file a complaint to appeal the decision in accordance with their domestic laws and regulations.

13. Consultations shall be held upon request of a Party which considers that another Party has taken a measure which is likely to create, or has created, an obstacle to trade. Such consultations shall take place within 30 days from the date of receipt of the request with the objective of finding a mutually acceptable solution. If consultations are not taking place in the Joint Committee, it should be informed thereof. In case of perishable goods, consultations between the competent authorities shall be held without undue delay. Such consultations may be conducted by any agreed method.

14. Upon request by a Party, the Parties shall, without undue delay, agree on an arrangement extending to each other equivalent³ treatment related to sanitary and phytosanitary measures mutually agreed between each Party and a non-party.

15. The Parties shall exchange names and addresses of contact points in order to facilitate communication and exchange of information. They shall notify any substantial change in structure, organisation and division of responsibilities of the competent authorities and contact points to each other.

ARTICLE 2.13

Trade Facilitation

The rights and obligations of the Parties regarding Trade Facilitation are set out in Annex VI (Trade Facilitation).

² For the purposes of this Article, “perishable goods” means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

³ “Equivalent” used here shall not be understood as the term “equivalence” in the WTO SPS Agreement.

ARTICLE 2.14

Subsidies and Countervailing Measures

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. Upon receipt of a properly documented countervailing duty application with respect to imports from another Party, and before initiating an investigation, the Party considering initiating an investigation shall provide written notification to the Party whose goods are subject to investigation at least 30 days in advance of the date of initiation and invite the Party whose goods are subject to investigation for consultations, with the view to finding a mutually acceptable solution. The notifying Party shall allow for a 30-day period for consultations. The consultations may take place in the Joint Committee if the Parties agree and should not prevent the competent authorities of a Party from proceeding expeditiously with regard to initiating the investigation.

ARTICLE 2.15

Anti-dumping Measures

1. The rights and obligations of the Parties with regard to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, subject to paragraphs 2 to 5.
2. Subject to paragraph 1 and considering the comprehensive economic partnership established by this Agreement, the Parties will consider to refrain from initiating anti-dumping procedures or applying anti-dumping measures against each other.
3. Upon receipt of a properly documented application for the initiation of an anti-dumping investigation concerning imports from another Party, the Party considering initiating an investigation shall provide written notification to the Party whose goods are subject to investigation of the application 30 days in advance of the date of initiation of such investigation. Under very exceptional circumstances, the aforementioned notice of 30 days may be reduced to a minimum of seven days. Upon request of the Party whose goods are subject to investigation, the notifying Party shall allow for a 30-day period for consultations. The consultations may take place in the Joint Committee if the Parties agree. These consultations should not prevent the competent authorities of a Party from proceeding expeditiously with regard to initiating the investigation.
4. Unless the circumstances have changed, a Party shall not initiate an anti-dumping investigation with regard to the same product from the same Party after a determination which resulted in the non-application or revocation of anti-dumping measures or after the termination of a measure. In such case, the Parties agree to undertake a special examination on any application for an anti-dumping investigation.

5. The Parties shall, upon request of a Party, exchange views about the application of this Article and its effect on trade between the Parties at the meetings of the Joint Committee.

ARTICLE 2.16

WTO Safeguard Measures

1. The rights and obligations of the Parties with respect to global safeguards shall be governed by Article XIX of the GATT 1994, the WTO Agreement on Safeguards, and Article V of the WTO Agreement on Agriculture.

2. In taking measures under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, a Party will, consistent with its obligations under the WTO Agreement, consider to exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury.

ARTICLE 2.17

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive goods in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of paragraphs 2 to 11.

2. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in:

- (a) suspending the further reduction of any rate of customs duty for the product provided for under this Agreement; or
- (b) increasing the rate of customs duty for the product to a level not to exceed the lesser of:
 - (i) the MFN rate of duty applied at the time the bilateral safeguard measure is taken; or
 - (ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

3. Bilateral safeguard measures shall be taken for a period not exceeding one year. In exceptional circumstances, after consultations pursuant to paragraph 7, measures may be taken up to a total maximum period of three years. After a period of non-application of three years and in an emergency situation only, a Party may apply another bilateral safeguard measure in accordance with this Article.

4. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards.

5. A Party intending to take a bilateral safeguard measure under this Article shall immediately, and in any case before taking such measure, notify the other Parties. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure.

6. A Party that may be affected by a bilateral safeguard measure may request any adequate means of trade compensation in the form of substantially equivalent trade liberalisation in relation to its imports.

7. The Party intending to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the Party that may be affected by the measure, with a view to reviewing the information arising from the investigation referred to in paragraph 4, exchanging views on the intended application or extension of a bilateral safeguard measure and reaching an understanding on compensation. The consultations shall take place in the Joint Committee if the Parties agree.

8. In the absence of a mutually acceptable solution within 30 days from the first day of consultations pursuant to paragraph 7, the importing Party may adopt a bilateral safeguard measure pursuant to paragraph 2 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the bilateral safeguard measure is taken may take compensatory action. The bilateral safeguard measure and the compensatory action shall be immediately notified to the other Parties. In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the action which least disturbs the functioning of this Agreement. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the measure according to paragraph 2 is being applied.

9. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the bilateral safeguard measure.

10. In critical circumstances, where delay would cause damage, which would be difficult to repair, a Party may take a provisional bilateral safeguard measure in accordance with paragraph 2, pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such measure shall immediately notify the other Parties. Within 30 days from the date of receipt of the notification, the procedures set out in this Article shall be initiated. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

11. Any provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration, and any extension thereof, of the measure, set out in paragraphs 3 and 7 respectively. Any tariff increases shall be promptly refunded if the investigation described in paragraph 4 does not result in a finding that the conditions of paragraph 1 are met.

12. The Parties shall, upon request of a Party, exchange views about the application of this Article and its effect on trade between the Parties at the meetings of the Joint Committee.

ARTICLE 2.18

State Trading Enterprises

Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.19

General Exceptions

Article XX of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.20

Security Exceptions

Article XXI of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.21

Balance-of-Payments

1. Nothing in this Chapter shall be construed to prevent a Party in serious balance of payments and external financial difficulties, or imminent threat thereof, from adopting any measure for balance-of-payments purposes. A Party adopting such measure shall do so in accordance with the conditions established under the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.
2. Trade restrictive measures adopted for balance-of-payments purposes shall be temporary and non-discriminatory, and may not go beyond what is necessary to deal with the circumstances described in paragraph 1.
3. Nothing in this Chapter shall be construed to prevent a Party from using exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the “IMF”).
4. A Party adopting a measure according to paragraph 1 shall promptly notify the other Parties thereof. A notification by a Party in accordance with its international obligations as set out in paragraph 1 shall be deemed equivalent to a notification under this Agreement.

ARTICLE 2.22

Exchange of Data

1. The Parties recognise the value of trade data in the accurate analysis of the impact of the Agreement on trade between the Parties. The Parties shall periodically exchange data relating to trade in goods between them. Such information shall include, in particular, the most-favoured-nation tariff rates and import statistics, including, if available from all Parties, separate statistics for preferential imports. The Sub-Committee on Trade in Goods shall determine the rules of procedure, as appropriate, for any exchange of data according to this paragraph.
2. A Party shall give consideration to a request for technical cooperation with regard to exchange of data under paragraph 1 from another Party.

ARTICLE 2.23

Sub-Committee on Trade in Goods

1. A Sub-Committee on Trade in Goods (hereinafter referred to as “Sub-Committee”) is hereby established.

2. The mandate of the Sub-Committee is set out in Annex VII (Mandate of the Sub-Committee on Trade in Goods).

CHAPTER 3

TRADE IN SERVICES

ARTICLE 3.1

Scope and Coverage

1. This Chapter applies to measures by the Parties affecting trade in services and taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. With respect to air transport services, whether scheduled or non-scheduled, and ancillary services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. For the purposes of this Chapter, the definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Agreement.
3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

ARTICLE 3.2

Definitions

For the purposes of this Chapter:

- (a) a juridical person is:
 - (i) “owned” by persons of a Party if more than 50% of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) “affiliated” with another person when it controls, or is controlled by, that person; or when it and that person are both controlled by the same person;
- (b) “a 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;

- (c) “commercial presence” means any type of business or professional establishment, including through:
 - (i) constitution, acquisition or maintenance of a juridical person; or
 - (ii) creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (d) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (e) “juridical person” means any legal entity duly constituted or otherwise organised under applicable laws and regulations, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (f) “juridical person of another Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the applicable laws and regulations of that Party, and is engaged in substantive business operations in the territory of a Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (aa) natural persons of that Party; or
 - (bb) juridical persons of that Party identified under subparagraph (i);
- (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (h) “measures by the Parties affecting trade in services” include measures with respect to:
 - (i) purchase, payment or use of a service;
 - (ii) access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;

- (iii) presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (i) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (j) “natural person of another Party” means a natural person who, under applicable laws and regulations of that Party, is a national of that Party who resides in the territory of any WTO Member;
- (k) “person” means either a natural person or a juridical person;
- (l) “sector of a service” means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule;
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (m) “services” means any service in any sector, except services supplied in the exercise of governmental authority;
- (n) “service consumer” means any person that receives or uses a service;
- (o) “service of a Party” means a service which is supplied:
 - (i) from or in the territory of a Party, or in the case of maritime transport, by a vessel registered under the domestic laws and regulations of a Party, or by a person of a Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of a Party;
- (p) “service supplier” means any person that supplies a service;⁴

⁴ This definition includes any person that seeks to supply services. Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (*i.e.* the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under 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 service supplier located outside the territory where the service is supplied or sought to be supplied.

- (q) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (r) “trade in services” means the supply of a service:
 - (i) from the territory of a Party into the territory of another Party;
 - (ii) in the territory of a Party to the service consumer of another Party;
 - (iii) by a service supplier of a Party, through commercial presence in the territory of another Party; and
 - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the territory of another Party.

ARTICLE 3.3

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN-Exemptions contained in Annex VIII (Lists of MFN-Exemptions), each Party shall accord immediately and unconditionally, with respect to all measures affecting the supply of services, to services and service suppliers of another Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.
2. Treatment granted under other existing or future agreements concluded by a Party and notified under Article V or Article *Vbis* of the GATS shall not be subject to paragraph 1.
3. If a Party concludes an agreement of the type referred to in paragraph 2, it shall notify the other Parties without delay. The Party concluding such an agreement shall, upon request by another Party, afford adequate opportunity to negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under that agreement.
4. For the purposes of this Chapter, with regard to the rights and obligations of the Parties in respect of advantages accorded to adjacent countries, paragraph 3 of Article II of the GATS shall apply and is hereby incorporated into and made part of this Agreement.

ARTICLE 3.4

Market Access

1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 3.2 (Definitions), each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.⁵

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, 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 requirement of an economic needs test;
- (c) limitations on the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁶
- (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 requirement 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.

⁵ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 3.2 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital.

⁶ This subparagraph does not cover measures of a Party, which limit inputs for the supply of services.

ARTICLE 3.5

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to the conditions and qualifications set out therein, each Party shall accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers⁷.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of another Party.

ARTICLE 3.6

Additional Commitments

Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 3.4 (Market Access) or 3.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

ARTICLE 3.7

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, 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

⁷ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

- (b) The provisions of subparagraph (a) 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.

3. Where a Party requires authorisation for the supply of a service, on which a specific commitment has been made, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

4. In sectors where specific commitments are undertaken, each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, are based on objective and transparent criteria, such as competence and the ability to supply the service.

5. Upon conclusion of the multilateral negotiations on the disciplines on Domestic Regulation pursuant to Article VI:4 of the GATS, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter based on the result of such multilateral negotiations.

- 6. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 5, that Party shall not apply qualification requirements and procedures, technical standards and licensing requirements and procedures that nullify or impair such specific commitments in a manner which is:

- (i) more burdensome than necessary to ensure the quality of the service; or
- (ii) in the case of licensing procedures, in itself a restriction on the supply of the service;

- (b) In determining whether a Party is in conformity with the obligation under subparagraph (a), account shall be taken of international standards of relevant international organisations⁸ applied by that Party.

7. Each Party shall provide for adequate procedures to verify the competence of professionals of another Party.

⁸ The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties.

ARTICLE 3.8

Recognition

1. For the purposes of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that Party. Such recognition may be based upon an agreement or arrangement with the requesting Party, or be accorded autonomously.
2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate a comparable agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that Party should also be recognised.
3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 3.9

Movement of Natural Persons

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, residence or employment on a permanent basis.
3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.⁹

⁹ The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 3.10

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Nothing in this Chapter shall require any Party to disclose confidential information, which would impede law enforcement, or otherwise be contrary to the public interest or that would prejudice legitimate commercial interests of particular enterprises, public or private.
4. Each Party shall treat as confidential the information submitted by another Party, which has been designated as confidential by the Party submitting the information.

ARTICLE 3.11

Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 3.3 (Most-Favoured-Nation Treatment) and specific commitments.
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 specific commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The provisions of 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 territory.

ARTICLE 3.12

Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 3.11 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, at the request of another Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 3.13

Payments and Transfers

1. Subject to its specific commitments and except under the circumstances referred to in Article 3.14 (Restrictions to Safeguard the Balance of Payments), no Party shall apply restrictions on international transfers and payments for current transactions with another Party.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 3.14 (Restrictions to Safeguard the Balance of Payments) or at the request of the IMF.

ARTICLE 3.14

Restrictions to Safeguard the Balance of Payments

For the purposes of this Chapter, paragraphs 1 to 3 of Article XII of the GATS, shall apply and are hereby incorporated into and made part of this Agreement.

ARTICLE 3.15

Consultation on Implementation

If, after the entry into force of this Agreement, difficulties arise in a services sector of a Party where that Party has undertaken a specific commitment, that Party may request consultations with the other Parties, regardless whether such difficulties arise from liberalisation or not, for the purposes of exchanging information, data or experience, or exchanging views on possible ways and means to address such difficulties, taking into account the circumstances of the case at hand.

ARTICLE 3.16

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 the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall prevent a Party from the adoption or enforcement of measures:

- (a) necessary to protect public morals or to maintain public order¹⁰;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with domestic laws and regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or dealing with the effects of a default on services contracts;
 - (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;
 - (iii) safety;

¹⁰ 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.

- (d) inconsistent with Article 3.5 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective¹¹ imposition or collection of direct taxes with respect to services or service suppliers of the other Parties;
- (e) inconsistent with Article 3.3 (Most-Favoured-Nation Treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

ARTICLE 3.17

Security Exceptions

Nothing in this Chapter shall be construed to:

- (a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;

¹¹ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (d) of this Article and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic laws and regulations of the Party taking the measure.

- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) 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 3.18

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 3.4 (Market Access), 3.5 (National Treatment) and 3.6 (Additional Comments). With respect to sectors where such commitments are undertaken, each schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in Article 3.6 (Additional Commitments); and
- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with Articles 3.4 (Market Access) and 3.5 (National Treatment) shall be inscribed in the column relating to Article 3.4 (Market Access). The inscription will be considered to provide a condition or qualification to Article 3.5 (National Treatment).

3. The Parties' Schedules of Specific Commitments are set out in Annex XII (Schedules of Specific Commitments).

ARTICLE 3.19

Modification of Schedules

1. Upon written request of a Party, the Parties shall hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months from the date of the request.

2. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 10.1 (Joint Committee) and 12.2 (Amendments).

ARTICLE 3.20

Review

With the objective of further liberalising trade in services between them the Parties shall review at least every three years, or more frequently if so agreed, their Schedules of Specific Commitments and their Lists of MFN-Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than five years from the date of entry into force of this Agreement.

ARTICLE 3.21

Annexes

The following Annexes form an integral part of this Chapter:

- Annex VIII (Lists of MFN-Exemptions);
- Annex IX (Movement of Natural Persons Supplying Services);
- Annex X (Recognition of Qualifications of Service Suppliers);
- Annex XI (Recognition of Certification of Competency and Training of Seafarers for Service on Board Vessels Registered in Switzerland);
- Annex XII (Schedules of Specific Commitments);
- Annex XIII (Telecommunications Services);
- Annex XIV (Financial Services); and
- Annex XV (Tourism and Travel Services).

CHAPTER 4
INVESTMENT

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 3.1 (Scope and Coverage).¹²
2. This Chapter does not include investment protection and shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and Indonesia are parties.
3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

ARTICLE 4.2

Definitions

For the purposes of this Chapter,

- (a) “juridical person” means any legal entity duly constituted or otherwise organised under applicable laws and regulations, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, partnership, joint venture, sole proprietorship or association;
- (b) “juridical person of a Party” means a juridical person constituted or otherwise organised under applicable laws and regulations of a Party and engaged in substantive business operations in that Party;
- (c) “natural person” means a person having the nationality of a Party in accordance with applicable laws and regulations;
- (d) “commercial presence” means any type of business establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person;
 - or

¹² It is understood that services specifically exempted from the scope of Chapter 3 (Trade in Services) do not fall under the scope of this Chapter.

- (ii) the creation or maintenance of a branch or a representative office within the territory of another Party for the purpose of performing an economic activity.

ARTICLE 4.3

Investment Promotion

1. The Parties recognise the importance of cooperating to promote investment and technology flows as a means to achieve economic growth and development through effective ways based on common interest and mutual benefits.
2. Cooperation as referred to in paragraph 1 may include:
 - (a) identifying investment opportunities and activities to promote investment abroad, in particular partnerships between small and medium sized enterprises;
 - (b) exchange of information on investment regulations; and
 - (c) furthering of an investment climate conducive to increase investment flows.

ARTICLE 4.4

National Treatment

In the sectors inscribed in Annex XVI (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, each Party shall accord to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations, to its own juridical and natural persons, and to the commercial presence of such persons in its territory.

ARTICLE 4.5

Schedule of Specific Commitments

The sectors liberalised by each Party pursuant to this Chapter and the conditions and qualifications referred to in Article 4.4 (National Treatment) are set out in the Schedules of Specific Commitments included in Annex XVI (Schedules of Specific Commitments).

ARTICLE 4.6

Modification of Schedules

1. Upon written request of a Party, the Parties shall, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months from the date of the request.
2. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 10.1 (Joint Committee) and 12.2 (Amendments).

ARTICLE 4.7

Key Personnel

1. Each Party shall, subject to its domestic laws and regulations, grant natural persons of another Party, and key personnel who are employed by natural or juridical persons of another Party, entry and temporary stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.
2. Each Party shall, subject to its domestic laws and regulations, permit natural or juridical persons of another Party and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.
3. The Parties should, subject to their domestic laws and regulations, grant entry and temporary stay and provide any necessary documentation to the spouse and minor children of key personnel.

ARTICLE 4.8

Right to Regulate

1. Subject to the provisions of this Chapter, a Party may, on a non-discriminatory basis, adopt, maintain or enforce any measure that is in the public interest, such as measures to meet health, safety or environmental concerns or reasonable measures for prudential purposes.

2. A Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, measures to meet health, safety or environmental concerns as an encouragement for the establishment, acquisition, expansion or retention in its territory of a commercial presence of persons of another Party or a non-party.

ARTICLE 4.9

Payments and Transfers

1. Except under the circumstances referred to in Article 4.10 (Restrictions to Safeguard the Balance-of-Payments), no Party shall apply restrictions on current payments and capital movements relating to commercial presence in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 4.10

Restrictions to Safeguard the Balance-of-Payments

For the purposes of this Chapter, paragraphs 1 to 3 of Article XII of the GATS, shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 4.11

General Exceptions

For the purposes of this Chapter, Article XIV of the GATS applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 4.12

Security Exceptions

For the purposes of this Chapter, paragraph 1 of Article XIVbis of the GATS applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 4.13

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility of further developing the Parties' commitments.

CHAPTER 5

PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 5

Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter, Annex XVII (Protection of Intellectual Property) and the Record of Understanding regarding Patents, and the international agreements referred to therein.
2. The Parties shall accord each other's nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation shall be in accordance with the substantive provisions of Articles 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "TRIPS Agreement").
3. The Parties shall grant to each other's nationals treatment no less favourable than that accorded to nationals of a non-party. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement.
4. If a Party concludes a trade agreement containing provisions on the protection of intellectual property rights with a non-party that has to be notified under Article XXIV of the GATT 1994, it shall also notify the other Parties and accord to them treatment no less favourable than that provided under such agreement. The Party concluding such an agreement shall, upon request of another Party, negotiate incorporation into this Agreement of provisions of the agreement granting a treatment no less favourable than that provided under that agreement.
5. Upon request of a Party, to the Joint Committee, the Parties agree to review the provisions of this Chapter and Annex XVII (Protection of Intellectual Property), with a view, *inter alia*, to further developing adequate levels of protection and implementation.

CHAPTER 6

GOVERNMENT PROCUREMENT

ARTICLE 6.1

Transparency

1. The Parties shall enhance their mutual understanding of their government procurement laws and regulations regarding their respective procurement markets.
2. Each Party shall publish its laws, or otherwise make publicly available, its domestic laws, regulations and administrative rulings of general application, as well as international agreements to which it is a party and may affect its procurement markets.
3. Each Party shall promptly respond to specific questions and provide information requested by another Party on matters referred to in paragraph 2.

ARTICLE 6.2

Further Negotiations

The Parties shall promptly notify each other if they enter into an agreement granting market access for government procurement with a non-party and shall, upon request from another Party, enter into negotiation on market access on government procurement.

ARTICLE 6.3

Contact Points

1. Exchange of information and cooperation shall be facilitated through the following contact points:
 - (a) for EFTA, the EFTA Secretariat; and
 - (b) for Indonesia, the National Public Procurement Agency (NPPA).
2. Each Party shall notify the other Parties of any change to its contact point.

ARTICLE 6.4

Dispute Settlement

1. The Parties shall not have recourse to dispute settlement under Chapter 11 (Dispute Settlement) for any matter arising under this Chapter.
2. The Parties agree to negotiate application of Chapter 11 (Dispute Settlement) to any new articles in the context of Article 6.2 (Further Negotiations).

CHAPTER 7

COMPETITION

ARTICLE 7.1

Rules of Competition concerning Enterprises

1. The Parties recognise that anti-competitive practices have the potential to undermine the benefits of economic partnership arising from this Agreement. The following practices of enterprises are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or effect the prevention, restriction or distortion of competition; and
- (b) abuse by one or more enterprises of a dominant position in the territory of a Party as a whole or in a substantial part thereof.

2. The Parties shall apply their respective domestic competition laws and regulations with a view to proscribe such practices as outlined in paragraph 1 in conformity with the principles of transparency, non-discrimination and procedural fairness.

3. The rights and obligations under this Chapter shall only apply between the Parties.

ARTICLE 7.2

State Enterprises, Enterprises with Special and Exclusive Rights and Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises, enterprises with special or exclusive rights or designated monopolies.

2. The Parties shall ensure that state enterprises, enterprises with special or exclusive rights and designated monopolies do not adopt or maintain anti-competitive practices affecting trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

ARTICLE 7.3

Cooperation

1. The Parties recognise the importance of general cooperation in the area of competition policy. The Parties may cooperate to exchange information relating to the development of competition policy, subject to their domestic laws and regulations and available resources. The Parties may conduct such cooperation through their competent authorities.

2. The Parties involved shall cooperate in their dealings with anti-competitive practices as outlined in paragraph 1 of Article 7.1 (Rules of Competition concerning Enterprises). Cooperation may include exchange of pertinent information that is available to the Parties. No Party shall be required to disclose information that is confidential according to its domestic laws and regulations.

ARTICLE 7.4

Consultations

The Parties may consult matters related to anti competitive practices and their adverse effects to trade. The consultations shall be without prejudice to the autonomy of each Party to develop, maintain and enforce its domestic competition laws and regulations.

ARTICLE 7.5

Dispute Settlement

The Parties shall not have recourse to dispute settlement under Chapter 11 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 8



TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 8.1

Context, Objectives, and Scope

1. The Parties recall the Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development 1992, Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Rio+20 Outcome Document “The Future We Want” of 2012, the UN Sustainable Development Summit Outcomes Document “Transforming Our World: the 2030 Agenda for Sustainable Development” of 2015, Monterrey Consensus of the International Conference on Financing for Development of 2002, Doha Declaration on Financing for Development of 2008 and Addis Ababa Action Agenda of 2015, ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, and the ILO Declaration on Social Justice for a Fair Globalization of 2008.
2. The Parties reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties’ trade relations.
3. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related labour and environmental issues as part of a global approach to trade and sustainable development. They further recognise that eradicating poverty is an indispensable requirement for sustainable development and that trade can be an engine for inclusive economic growth and poverty reduction.
4. The Parties agree that this Chapter embodies a cooperative approach based on common values and interests, taking into account the differences in their levels of development as appropriate.
5. The Parties agree that the provisions of this Chapter shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between the Parties.
6. Except as otherwise provided for in this Chapter, this Chapter applies to trade-related and investment-related aspects of sustainable development in all its dimensions.

7. The reference to labour in this Chapter includes the objective to promote inclusive and sustainable economic growth, employment and decent work for all as stipulated in **Goal 8 of the 2030 Sustainable Development Agenda** and issues relevant to Decent Work Agenda as agreed in the ILO.

ARTICLE 8.2

Right to Regulate and Levels of Protection

1. Recognising the right of each Party, subject to the provisions of this Agreement, to pursue its own means for achieving sustainable development, including establishing its own levels of labour and environmental protection and to adopt or modify accordingly its relevant domestic laws and policies, each Party shall seek to ensure that its domestic laws and policies provide for and encourage high levels of environmental and labour protection, consistent with standards, principles and agreements which they are committed or a Party to, and shall strive to further improve the level of protection provided for in those domestic laws and policies.

2. The Parties recognise the importance of scientific, technical, and other information, and relevant international standards, guidelines and recommendations, as references in preparing and implementing measures related to environment and labour conditions that affect trade and investment between them.

ARTICLE 8.3

Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations or Standards

1. The Parties shall effectively apply their environmental and labour laws, regulations or standards.

2. Subject to Article 8.2 (Right to Regulate and Levels of Protection), the Parties shall not:

- (a) weaken or reduce levels of environmental or labour protection provided by their domestic laws, regulations or standards with the sole intention to encourage investment from another Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory; or
- (b) waive or otherwise derogate from, or offer to waive or otherwise derogate from, such domestic laws, regulations or standards in order to encourage investment from another Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory.

ARTICLE 8.4

Sustainable Economic Development

1. The Parties recognise that trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development in all its dimensions.
2. The Parties shall strive to facilitate and promote investment, trade in, and dissemination of, goods and services that contribute to sustainable development, such as environmental technologies, sustainable renewable energy, as well as goods and services that are energy efficient or subject to voluntary sustainability schemes.
3. The Parties agree to exchange views and may consider, jointly or bilaterally, cooperation in this area.

ARTICLE 8.5

Social Development

1. The Parties recall the obligations deriving from the international human rights instruments to which they are a party.
2. The Parties underline the need to protect the welfare and improve the livelihoods of vulnerable groups such as women, children, small holders, subsistence farmers or fishermen.
3. The Parties emphasise the importance of information, education and training on sustainability at all levels in order to contribute to sustainable social development.

ARTICLE 8.6

International Labour Standards and Agreements

1. The Parties recall the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its 86th Session in 1998, to respect, promote and realise the principles concerning the fundamental rights, namely:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour;
 - (c) the effective abolition of child labour; and

- (d) the elimination of discrimination in respect of employment and occupation.

2. The Parties reaffirm their commitment, under the Sustainable Development Goal number 8 as well as the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, to recognise full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all.

3. The Parties recall the obligations deriving from membership of the ILO to effectively implement the ILO Conventions, which they have ratified, and to make continued efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as “up-to-date” by the ILO.

4. The Parties reaffirm, as set out in the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session in 2008, that the violation of fundamental principles and rights at work shall not be invoked or otherwise used as a legitimate comparative advantage and that labour standards shall not be used for protectionist trade purposes.

ARTICLE 8.7

Multilateral Environmental Agreements and Environmental Principles

1. The Parties reaffirm their commitment to the effective implementation in their domestic laws, regulations and practices of the multilateral environmental agreements to which they are a party.

2. The Parties reaffirm their adherence to environmental principles reflected in the international instruments referred to in Article 8.1 (Context, Objectives, and Scope).

ARTICLE 8.8

Sustainable Forest Management and Associated Trade

1. The Parties recognise the importance of effective law and governance in order to ensure sustainable management of forests and peatlands and thereby contribute to the reduction of greenhouse gas emissions and biodiversity loss resulting from deforestation and degradation of natural forests and peatlands, including from land-use change.

2. With the aim of contributing to sustainable management of forests and peatlands, including through the promotion of trade in products that derive from sustainably managed forests, the Parties undertake to, *inter alia*:

- (a) promote the effective use of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- (b) promote the development and use of certification schemes for forest-related products from sustainably managed forests;
- (c) promote the effective implementation and use of legality assurance system for timber as required in Forest Law Enforcement Governance and Trade Voluntary Partnership Agreement and corresponding schemes, with the aim to combat illegal logging and eliminate trade of illegal timber products; and
- (d) exchange information on trade-related initiatives on forest governance, including measures to combat illegal logging and measures to exclude illegally harvested timber and timber products from trade flows.

3. The Parties agree to cooperate on issues pertaining to sustainable management of forests and peatlands through bilateral arrangements if applicable and in the relevant multilateral fora in which they participate, in particular the United Nations collaborative initiative on Reducing Emissions from Deforestation and Forest Degradation as emphasised in the Paris Agreement.

ARTICLE 8.9

Sustainable Management of Fisheries and Aquaculture and Associated Trade

1. The Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems, and the role of trade in pursuing these objectives.

2. For the purposes of paragraph 1, and in a manner consistent with their international obligations, the Parties commit to:

- (a) promote the implementation of comprehensive, effective and transparent policies and measures to combat illegal, unreported and unregulated (hereinafter referred to as “IUU”) fishing and fisheries crime and to exclude products stemming from IUU fishing, fisheries crime, forced labour or human trafficking from trade flows, including from third parties into their market;
- (b) promote the development of sustainable and responsible aquaculture;
- (c) promote the use of FAOs Voluntary Guidelines for Catch Documentation Schemes; and

- (d) contribute to the fulfilment of the objectives set out in the 2030 Agenda for Sustainable Development regarding fisheries subsidies.

3. The Parties commit to comply with long-term conservation and management measures and effectively implement in their laws and practices the relevant international fisheries and aquaculture instruments to which they are a party.

4. The Parties agree to cooperate on issues pertaining to sustainable management of fisheries and aquaculture through bilateral arrangements if applicable and in the relevant international fora in which they participate including in Regional Fisheries Managements Organisations by, *inter alia*, facilitating the exchange of information on IUU fishing in order to combat such activities.

ARTICLE 8.10

Sustainable Management of the Vegetable Oils Sector and Associated Trade

1. The Parties recognise the need to take into account the economic, environmental and social opportunities and challenges associated with the production of vegetable oils and that trade between them can play an important role in promoting sustainable management and operation of the vegetable oils sector.

2. With a view to ensuring economically, environmentally and socially beneficial and sound management and operation of the vegetable oils sector, the Parties commit to, *inter alia*:

- (a) effectively apply laws, policies and practices aiming at protecting primary forests, peatlands, and related ecosystems, halting deforestation, peat drainage and fire clearing in land preparation, reducing air and water pollution, and respecting rights of local and indigenous communities and workers;
- (b) support the dissemination and use of sustainability standards, practices and guidelines for sustainably produced vegetable oils;
- (c) cooperate on improving and strengthening government standards where applicable;
- (d) ensure transparency of domestic policies and measures pertaining to the vegetable oils sector; and
- (e) ensure that vegetable oils and their derivatives traded between the Parties are produced in accordance with the sustainability objectives referred to in subparagraph (a).

ARTICLE 8.11

Cooperation in International Fora

The Parties agree to strengthen their cooperation on issues of mutual interest to promote sustainable development, including labour and environmental issues and their trade and investment-related aspects, in relevant bilateral, regional and multilateral fora, including in the ILO and within the framework of multilateral environmental agreements to which they are a party.

ARTICLE 8.12

Implementation and Consultations

1. The Parties shall designate the administrative entities, which shall serve as contact points for the purpose of implementing this Chapter.
2. A Party may, through the contact points referred to in paragraph 1, request expert consultations or consultations within the Joint Committee regarding any matter arising under this Chapter. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. Where relevant, and subject to the agreement of the Parties, they may seek advice of the relevant international organisations or bodies.
3. The Parties shall not have recourse to arbitration under Chapter 11 (Dispute Settlement) for any matters arising under this Chapter.

ARTICLE 8.13

Review

The Parties shall periodically review, in the Joint Committee, progress achieved in pursuing the objectives set out in this Chapter, and consider relevant international developments to identify areas where further action could promote these objectives.

CHAPTER 9
COOPERATION AND CAPACITY BUILDING

ARTICLE 9.1

Objectives and Scope

1. This Chapter sets out a framework for cooperation and capacity building under this Agreement.
2. The Parties agree that the aim of cooperation and capacity building is to foster competitiveness of goods and services, to enhance the fulfilment of applicable international standards, and to achieve sustainable development, in particular by strengthening human and institutional capacities.

ARTICLE 9.2

Principles

1. The Parties shall promote cooperation and capacity building with the aim to enhance the mutual benefits of this Agreement in accordance with their national strategies and policy objectives and taking into account the different levels of social and economic development of the Parties.
2. Cooperation under this Chapter shall pursue the following objectives:
 - (a) facilitate the implementation of the overall objectives of this Agreement, in particular to enhance mutually beneficial trade and investment opportunities arising from this Agreement;
 - (b) support Indonesia's efforts to achieve sustainable economic and social development, including by strengthening human and institutional capacities.
3. Cooperation and capacity building shall cover sectors affected by the process of liberalisation and restructuring of the Indonesian economy as well as sectors with the potential to benefit from this Agreement.

ARTICLE 9.3

Methods and Means

1. Cooperation and capacity building by the EFTA States to Indonesia shall be provided bilaterally through EFTA programmes, multilaterally or in a combination thereof.
2. The Parties shall cooperate with the objective of identifying and employing the most effective methods and means for the implementation of this Chapter, building on already existing forms of bilateral cooperation between the Parties, and, where applicable, taking into consideration the efforts undertaken by relevant international organisations in order to ensure effectiveness and coordination.
3. Means of cooperation and capacity building may include:
 - (a) exchange of information, transfer and exchange of expertise and training, including through facilitating exchange visits of researchers, experts, specialists and private sector representatives;
 - (b) grants, development funds or other financial means;
 - (c) joint activities such as joint studies and research projects concerning issues relating to this Agreement;
 - (d) facilitation for the transfer of technology, skills and practices;
 - (e) institutional assistance and capacity building including through training seminars, workshops, conferences and internships;
 - (f) support for participation in international activities such as standards setting;
 - (g) risk assessment analyses in the trade area; and
 - (h) any other means of cooperation as mutually agreed by the Parties.
4. The Parties may implement cooperation and capacity building activities with participation of national and international experts, institutions, organisations and private sector representatives, as appropriate.

ARTICLE 9.4

Memorandum of Understanding

This Chapter shall be implemented on the basis of a Memorandum of Understanding on Cooperation and Capacity Building between the EFTA States and Indonesia (hereinafter referred to as “Memorandum of Understanding”). It shall be signed in conjunction with this Agreement, building upon and complementing existing or already planned bilateral cooperation initiatives and activities.

ARTICLE 9.5

Fields of Cooperation and Capacity Building

1. Cooperation and capacity building may cover any field jointly identified by the Parties that may serve to enhance Indonesia’s capacities to benefit from increased international trade and investment, including:

- (a) customs, origin matters and trade facilitation;
- (b) sustainable development;
- (c) fisheries, aquaculture and marine products;
- (d) standards, technical regulations and conformity assessment procedures;
- (e) sanitary and phytosanitary measures;
- (f) intellectual property rights;
- (g) trade statistics;
- (h) trade promotion and development of manufacturing industries, including vocational education and training;
- (i) development of small and medium-sized enterprises;
- (j) maritime transportation;
- (k) tourism;
- (l) labour and employment; and
- (m) any other fields of cooperation mutually agreed by the Parties.

2. The Parties acknowledge the importance of promoting cooperation and capacity building activities to contribute to sustainable development.

ARTICLE 9.6

Financial Arrangement

1. The Parties shall cooperate to employ the most effective means for the implementation of this Chapter.

2. Each Party shall bear the cost and related expenses arising from its respective obligation for the implementation of this Chapter and the Memorandum of Understanding, in accordance with their domestic laws and regulations.

ARTICLE 9.7

Sub-Committee on Cooperation and Capacity Building

1. In order to ensure the proper implementation of the present chapter, the Parties hereby establish a Sub-Committee on Cooperation and Capacity Building (hereinafter referred to as the “Sub-Committee on Cooperation”) consisting of representatives of all the Parties.

2. The functions of the Sub-Committee on Cooperation shall be to:

- (a) discuss implementation of this Chapter and the Memorandum of Understanding;
- (b) identify, formulate and agree on detailed proposals for the implementation of this Chapter and the Memorandum of Understanding;
- (c) exchange of information on the progress of cooperation and capacity building as intended by this Agreement;
- (d) cooperate with other sub-committees established under this Agreement to perform stocktaking, monitoring and benchmarking on any issues related to the implementation of this Agreement;
- (e) undertake a periodic review, monitoring the implementation and operation of this Chapter and the Memorandum of Understanding, evaluating progress in the implementation and developing new plans for prospective joint activities and future cooperation and capacity building. The review may take place through written exchanges;

- (f) identify obstacles and opportunities for further cooperation. The Sub-Committee on Cooperation shall evaluate reports by the Parties and discuss issues raised by other sub-committees established under this Agreement with regard to cooperation and capacity building;
- (g) report to and consult with the Joint Committee.

3. The Parties shall inform the Sub-Committee on Cooperation about ongoing bilateral projects of direct relevance to this Agreement and the Sub-Committee on Cooperation shall take actions according to its functions in accordance with paragraph 2.

4. The Sub-Committee on Cooperation shall act by consensus.

5. The Sub-Committee on Cooperation shall meet as often as required and normally every year either physically or through electronic conferencing. The Sub-Committee on Cooperation shall hold its first meeting within six months after the entry into force of this Agreement. It shall be convened by the Joint Committee, by the chairpersons of the Sub-Committee or upon request of a Party. The venue shall alternate between an EFTA State and Indonesia, unless otherwise agreed by the Parties.

6. The meetings of the Sub-Committee on Cooperation shall be chaired jointly by one of the EFTA States and Indonesia.

7. The chairpersons of the Sub-Committee shall prepare a provisional agenda for each meeting in consultation with the Parties, and send it to them, as a general rule, no later than two weeks before the meeting.

8. The Sub-Committee shall prepare a report on the results of each meeting, and the chairpersons shall, if requested, report at a meeting of the Joint Committee.

ARTICLE 9.8

Dispute Settlement

1. The Parties shall not have recourse to dispute settlement under Chapter 11 (Dispute Settlement) for any matter arising under this Chapter.

2. Any dispute between the Parties concerning interpretation and implementation of this Chapter shall be settled amicably.

CHAPTER 10

INSTITUTIONAL PROVISIONS

ARTICLE 10.1

Joint Committee

1. The Parties hereby establish the EFTA-Indonesia Joint Committee comprising representatives of each Party. The Parties shall be represented by senior officials, delegated by them for this purpose.
2. The functions of the Joint Committee shall be:
 - (a) monitoring and reviewing the implementation of this Agreement, including by exploring the possibility to recommend further removal of barriers to trade and other restrictive measures concerning trade between EFTA States and Indonesia;
 - (b) to consider the further elaboration of this Agreement;
 - (c) supervise the work of all sub-committees and working groups established under this Agreement;
 - (d) endeavour to resolve disagreements that may arise regarding the interpretation or application of this Agreement; and
 - (e) consider any other matter that may affect the operation of this Agreement.
3. The Joint Committee may decide to establish sub-committees and working groups, if considered necessary, to assist it in accomplishing its tasks. Except where otherwise provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.
4. The Joint Committee may take decisions as set out in this Agreement, and may make recommendations on other matters, by consensus.
5. The Joint Committee shall meet within one year from the entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally every two years. Its meetings shall be chaired jointly by one of the EFTA States and Indonesia. The Joint Committee shall establish its rules of procedure.
6. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days from the date of receipt of the request, unless the Parties agree otherwise.

7. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the date the last Party notifies that its domestic legal requirements have been fulfilled, unless the decision itself specifies a later date. The Joint Committee may decide that the decision shall enter into force for those Parties that have fulfilled their domestic legal requirements, provided that Indonesia is one of those Parties.

ARTICLE 10.2

Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

CHAPTER 11
DISPUTE SETTLEMENT

ARTICLE 11.1

Scope and Forum

1. Unless otherwise provided for in this Agreement, this Chapter shall apply to the settlement of any dispute if a Party considers that a measure of the other Party is in breach of this Agreement.
2. A dispute regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party¹³. The forum thus selected shall be used to the exclusion of the other.
3. For the purposes of paragraph 2, dispute settlement procedures under the WTO Agreement are deemed to be selected by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 11.4 (Establishment of Arbitration Panel).
4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify the other Parties in writing of its intention.

ARTICLE 11.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to the dispute. They may begin at any time by agreement of the parties to the dispute and be terminated at any time by any party to the dispute. They may continue while proceedings of an arbitration panel established or reconvened in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation and in particular positions taken by the parties to the dispute during these proceedings, shall be treated as confidential and without prejudice to the rights of the parties to the dispute in any further proceedings.

¹³ For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

ARTICLE 11.3

Consultations

1. The Parties shall at all times make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter as referred to in paragraph 1 of Article 11.1 (Scope and Forum).
2. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party making the request shall provide the reasons for the request, including identification of the measures at issue and an indication of the legal and factual basis for the complaint. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply to the request within ten days from the receipt.
3. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 20 days from the date of receipt of the request for consultations.
4. The consulting parties shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
5. The consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.
6. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 11.4

Establishment of Arbitration Panel

1. The complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against if:
 - (a) the Party to which the request is made does not reply within ten days from the date of receipt of the request in accordance with paragraph 2 of Article 11.3 (Consultations);

- (b) the Party to which the request is made does not enter into consultations within 30 days or within 20 days for urgent matters, from the date of receipt of the request for consultations in accordance with paragraph 3 of Article 11.3 (Consultations); or
- (c) the consultations referred to in Article 11.3 (Consultations) fail to settle a dispute within 60 days, or 45 days in relation to urgent matters, including those on perishable goods, from the date of receipt of the request for consultations by the Party complained against.

A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration process.

2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.

3. The arbitration panel shall consist of three arbitrators who shall be appointed in accordance with the “Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration”, as effective from 20 October 1992 (hereinafter referred to as the “Optional Rules”) *mutatis mutandis*. The date of establishment of the arbitration panel shall be the date on which the Chairperson is appointed.

4. Unless the parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 11.4 (Establishment of Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling.”

5. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel may be established to examine complaints relating to the same matter, subject to the agreement of the parties to the disputes.

6. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice, to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

ARTICLE 11.5

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the panel shall be governed by the Optional Rules, *mutatis mutandis*.
2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement interpreted in accordance with customary rules of interpretation of public international law.
3. The language of any proceedings shall be English. The hearings of the arbitration panel shall be closed for the duration of any discussion of confidential information. Otherwise, the hearing shall be open to the public, unless the parties to the dispute decide otherwise.
4. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.
5. A Party's written submissions, written versions of oral statements and responses to questions put by an arbitration panel, shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute.
6. The Parties shall treat as confidential the information submitted to the arbitration panel, which has been designated as confidential by the Party submitting the information.
7. Decisions of the arbitration panel shall be taken by a majority of its arbitrators. Any arbitrator may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose which arbitrator are associated with majority or minority opinions.

ARTICLE 11.6

Panel Reports

1. The arbitration panel shall normally submit an initial report containing its findings and rulings to the parties to the dispute no later than 90 days from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. A party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days from the date of receipt of the report. The arbitration panel shall normally present to the parties to the dispute a final report within 30 days from the date of receipt of the initial report.

2. The final report, as well as any report under Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise, subject to the protection of any confidential information.

3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

ARTICLE 11.7

Suspension or Termination of Arbitration Panel Proceedings

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.

2. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

ARTICLE 11.8

Implementation of the Final Panel Report

1. The Party complained against shall promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days, from the date of the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall normally be given within 60 days from the date of receipt of that request.

2. The Party complained against shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 11.9 (Compensation and Suspension of Benefits). The ruling of the arbitration panel shall normally be rendered within 90 days from the date of receipt of the request.

ARTICLE 11.9

Compensation and Suspension of Benefits

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 11.8 (Implementation of the Final Panel Report), or notifies the complaining Party that it does not intend to comply with the final panel report, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20 days from the date of receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or matter that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the date of receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure or matter found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 45 days from the date of receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure or matter found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of receipt of that request.

ARTICLE 11.10

Other Provisions

1. Whenever possible, the arbitration panel referred to in Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the final report. If an arbitrator of the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrator.

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the parties to the dispute.

CHAPTER 12

FINAL PROVISIONS

ARTICLE 12.1

Footnotes, Annexes and Appendices

The footnotes and Annexes to this Agreement, including their Appendices, constitute an integral part of this Agreement.

ARTICLE 12.2

Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and recommendation.
2. Amendments to this Agreement shall be subject to ratification, acceptance or approval in accordance with the Parties' respective legal requirements. Unless otherwise agreed by the Parties, amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.
3. Notwithstanding paragraphs 1 and 2, the Joint Committee may decide to amend the Annexes and Appendices to this Agreement. A Party may accept a decision subject to the fulfilment of its domestic legal requirements. Such decision shall enter into force on the first day of the third month following the date that the last Party notifies the Depositary that its domestic legal requirements have been fulfilled, unless otherwise specified in the decision.
4. The text of the amendments and the instruments of ratification, acceptance or approval shall be deposited with the Depositary.
5. If its legal requirements permit, a Party may apply any amendment provisionally, pending its entry into force for that Party. Provisional application of amendments shall be notified to the Depositary.

ARTICLE 12.3

Accession

1. Any State becoming a Member of EFTA may accede to this Agreement on terms and conditions agreed by the Parties and the acceding State.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the date on which the acceding State and the existing Parties have deposited their instruments of ratification, acceptance or approval of the terms of accession.

ARTICLE 12.4

Withdrawal and Expiration

1. Each Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months from the date on which the notification is received by the Depositary.

2. If Indonesia withdraws, this Agreement shall expire when its withdrawal takes effect in accordance with paragraph 1.

3. Any EFTA State which withdraws from the Convention establishing the European Free Trade Association shall, *ipso facto* on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

ARTICLE 12.5

Entry into Force

1. This Agreement shall be subject to ratification, acceptance or approval in accordance with the respective legal and constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the first day of the third month after at least two EFTA States and Indonesia have deposited their instrument of ratification, acceptance or approval.

3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

ARTICLE 12.6

Depositary

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done in Jakarta, Indonesia, this 16 day of December 2018, in one original in the English language, which shall be deposited with the Depositary, who shall transmit certified copies to all the Parties.

For Iceland

For the Republic of Indonesia

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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