

FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY

The Government of Malaysia and The Government of the Republic of Turkey (hereinafter referred to as "the Parties"):

Inspired by their longstanding friendship and cooperation and growing trade relationship;

Desiring to enlarge the framework of relations between them through further liberalising trade;

Recognising that the strengthening of their economic partnership will bring economic and social benefits, create new opportunities for employment and improve the living standards of their people;

Building on their respective rights and obligations under the World Trade Organization and other multilateral, regional and bilateral agreements and arrangements;

Confirming their shared commitment to trade facilitation through removing non-tariff barriers to trade between them;

Desiring to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and it encourages broader and deeper economic cooperation;

Aware that economic development, social development and environmental protection are components of sustainable development and that free trade agreements can play an important role in promoting sustainable development; and

Resolved to promote bilateral trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers,
Have agreed as follows:

Chapter 1. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994, hereby establish a free trade area.

Article 1.2. Objectives

The objectives of this Agreement are:

- (a) to increase and enhance the economic cooperation between the Parties;
- (b) to promote the expansion of trade through the harmonious development of the economic relations between the Parties;
- (c) to gradually eliminate difficulties and restrictions on trade between the Parties so as to improve the efficiency and competitiveness of their respective sectors;
- (d) to establish a framework of transparent and predictable rules to facilitate trade between the Parties; and

(e) to create an environment conducive to broadening and supplementing the scope of this Agreement to include trade in services and bilateral investment.

Article 1.3. Relation to other Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under the WTO Agreement or any other multilateral or bilateral agreement to which it is a party. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other within the Joint Committee with a view to finding a mutually satisfactory solution, taking into consideration general principles of public international law.

Article 1.4. Customs Unions and Free Trade Areas

Nothing in this Agreement shall preclude the maintenance or establishment of customs unions, free trade areas or other arrangements between either of the Parties and third countries, insofar as they do not alter the rights and obligations provided for in this Agreement.

Chapter 2. General Definitions

Article 2.1. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) Agreement means the Free Trade Agreement between the Government of Malaysia and the Government of the Republic of Turkey;

(b) Agreement on Customs Valuation means the Agreement on Implementation of Article VII of the GATT 1994, contained in Annex 1A to the WTO Agreement;

(c) chapters, headings and subheadings means the chapters (two-digit codes), headings (four-digit codes) and the sub-headings (six-digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Chapter as "the Harmonized System" or "HS";

(d) customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of a good, including any form of surtax or surcharge imposed on, or in connection with, such importation. A customs duty does not include any:

(i) charges equivalent to an internal tax imposed consistently with Article III of GATT 1994;

(ii) duties imposed consistently with Chapter 8 (Trade Remedies);

(iii) fees or other charges imposed consistently with Article 3.6 (Administrative Fees and Charges);

(e) Customs Authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws:

(i) in the case of Malaysia, the Royal Malaysian Customs Department, or its successor; and

(ii) in the case of Turkey, the Ministry of Customs and Trade, or its successor;

(f) days means calendar days, including weekends and holidays;

(g) GATT 1994 means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement; (h) goods means both materials and products;

(i) Harmonized System (HS) means the Harmonized Commodity Description and Coding System governed by the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, including its General

Rules of Interpretation, Section Notes, and Chapter Notes, and their amendments, as adopted and implemented by the Parties in their respective tariff laws;

(j) Joint Economic and Trade Council means the Joint Economic and Trade Council established under Article 11.1 (Joint Economic and Trade Council);

(k) Joint Committee means the Joint Committee established under Article 11.4 (Joint Committee);

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

(m) originating goods means the goods that qualify as originating in accordance with Chapter 4 (Rules of Origin);

(n) person means both natural and legal persons;

(o) publish includes publication in written form or on the internet;

(p) territory 1 means:

(i) with respect to Malaysia,

(AA) the territories of the Federation of Malaysia;

(BB) the territorial waters of Malaysia and the seabed and subsoil of the territorial waters, and the air space above such areas over which Malaysia has sovereignty; and

(CC) any area extending beyond the limits of the territorial waters of Malaysia, and the seabed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;

(ii) with respect to Turkey, the land territory, internal waters, the territorial sea and the airspace above them, as well as the maritime areas beyond the territorial sea over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and preservation of natural resources, pursuant to international law;

(q) WTO means the World Trade Organization; and 1 Nothing in this Agreement, nor any cooperation, act or activity carried out in pursuant to this Agreement shall prejudice the political and legal position of the Parties with regard to any unsettled dispute concerning sovereignty or other rights over the territory and jurisdiction areas.

(r) WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

Chapter 3. Trade In Goods

Article 3.1. Scope

Except as otherwise provided, this Chapter applies to trade in goods between the Parties.

Article 3.2. National Treatment

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

Article 3.3. Reduction or Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule set out in Annex 3-1.

2. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on an originating good of the other Party covered by this Agreement.

3. If, at any time a Party reduces its applied most-favoured-nation (hereinafter referred to as "MFN") customs duty rate after the entry into force of this Agreement, that duty rate shall apply as regards trade in goods covered by this Chapter, as long as it is lower than the customs duty rate calculated in accordance with the Party's Tariff Schedule in Annex 3-1.

4. On the request of either Party, the Joint Committee shall be convened to consider accelerating the reduction or elimination of customs duties set out in their respective Tariff Schedules in Annex 3-1. Following the decision of the Joint Committee, each Party shall give effect to such acceleration in accordance with Article 14.5 (Amendments).

5. The Parties shall not introduce new or increase existing customs duties and charges having equivalent effect on exports from the date of entry into force of this Agreement. If a Party enters into any agreement with a non-Party where commitments are more favourable in terms of liberalization of the customs duties and charges having equivalent effect on exports than that accorded under this Agreement, it shall without delay apply the same favourable treatment to the other Party.

Article 3.4. Classification of Goods

For the purposes of this Agreement, the classification of goods in trade between the Parties shall be in conformity with the Harmonized System (HS).

Article 3.5. Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, the Agreement on Customs Valuation, as may be amended shall, mutatis mutandis, be incorporated into and made part of this Agreement.

Article 3.6. Administrative Fees and Charges

Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and anti-dumping duty, countervailing duty and safeguard duty) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

Article 3.7. Non-tariff Measures

1. Except in accordance with Article XI of GATT 1994 or as otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction other than duties, taxes or other charges on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under

paragraph 1 and that they are not constituted, adopted or applied with a view to or with the effect of creating unnecessary restrictions to trade between the Parties.

Article 3.8. Sub-committee on Trade In Goods

1. The Parties hereby establish a Sub-Committee on Trade in Goods, comprising of officials of the Parties. 2. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to this Chapter;
- (c) reporting the findings and the outcome of discussions to the Joint Committee;
- (d) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
- (e) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint Committee for its consideration; and
- (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.4 (Joint Committee).

3. The Sub-Committee on Trade in Goods shall meet at a venue and time, to be agreed by the Parties.

Chapter 4. Rules of Origin

Article 4.1. Definitions

For the purposes of this Chapter:

- (a) aquaculture means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;
- (b) competent authorities means the Ministry of Customs and Trade for Turkey and the Ministry of International Trade and Industry for Malaysia;
- (c) consignment means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
- (d) customs value means the value determined in accordance with Agreement on Customs Valuation;
- (e) ex-works price means the price paid for the product ex-works to the manufacturer in Turkey or in Malaysia in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;
- (f) generally accepted accounting principles (GAAP) means the recognised consensus or substantial authoritative support in a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
- (g) manufacture means any kind of working or processing including assembly or specific operations;

(h) material means any matter or substance including raw materials, ingredients, parts, and components used or consumed in the production of goods or physically incorporated into goods subjected to a process in the production of other goods;

(i) non-originating good or non-originating material means a good or material which does not qualify as originating under this Chapter;

(j) originating good or originating material means a good or material that qualify as originating under this Chapter;

(k) packing materials or containers for transportation means goods used to protect a good during its transportation, different from those containers or materials used for its retail sale;

(l) product means the product being manufactured, even if it is intended for later use in another manufacturing operation;

(m) production means methods of obtaining goods including growing/planting, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, aquaculture, manufacturing, producing, processing or assembling a good;

(n) value of materials means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the non-originating materials in Turkey or in Malaysia; and

(o) value of originating materials means the customs value at the time of importation of the originating materials used, if they are imported, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the originating materials in Turkey or in Malaysia. DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"

Article 4.2. Originating Products

For the purpose of implementing this Agreement, the following products shall be considered as originating in a Party: (a) products wholly obtained in that Party within the meaning of Article 4.4 (Wholly Obtained Products); and

(b) products produced in that Party incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in that Party within the meaning of Article 4.5 (Sufficiently Worked or Processed Products).

Article 4.3. Cumulation of Origin

1. Without prejudice to the provisions of Article 4.2 (Originating Products), materials originating in a Party shall be considered as materials originating in the other Party when incorporated into a product there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond the operations referred to in Article 4.6 (Insufficient/Minimal Working or Processing).

2. Notwithstanding paragraph 1, materials falling under HS Chapters 25 to 97 originating in the European Union shall be considered as materials originating in Turkey or Malaysia when further processed or incorporated into a product obtained there.

3. In order for the products referred to in paragraph 2 to acquire originating status, it shall not be necessary that the materials have undergone sufficient working or processing, provided that:

(a) the working or processing of the materials carried out in Turkey or Malaysia goes beyond the operations referred to in Article 4.6 (Insufficient/Minimal Working or Processing);

(b) the materials were originating in the European Union, in application of rules of origin identical to those applicable if the said materials were exported directly to Turkey or Malaysia; and

(c) Turkey, Malaysia and the European Union have arrangements which allow for adequate administrative cooperation procedures ensuring full implementation of this cumulation mechanism as well as of Articles on certification and on verification of origin of the products.

4. The cumulation established in paragraphs 2 and 3 shall be applied provided that preferential trade agreements in accordance with Article XXIV of GATT 1994 between Turkey, Malaysia and the European Union, respectively, are in force.

5. Notwithstanding paragraph 1, materials falling under HS Chapters 25 to 97 originating in a member of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") shall be considered as materials originating in Turkey or Malaysia when further processed or incorporated into a product obtained there.

6. In order for the products referred to in paragraph 5 to acquire originating status, it shall not be necessary that the materials have undergone sufficient working or processing, provided that:

(a) the working or processing of the materials carried out in Turkey or Malaysia goes beyond the operations referred to in Article 4.6 (Insufficient/Minimal Working or Processing);

(b) the materials were originating in a member of ASEAN, in application of rules of origin identical to those applicable if the said materials were exported directly to Turkey or Malaysia; and

(c) Turkey, Malaysia and the relevant member of ASEAN have arrangements which allow for adequate administrative cooperation procedures ensuring full implementation of this cumulation mechanism as well as of Articles on certification and on verification of origin of the products.

7. The cumulation established in paragraphs 5 and 6 shall be applied provided that preferential trade agreements in accordance with Article XXIV of GATT 1994 between Turkey, Malaysia and the relevant member of ASEAN, respectively, are in force.

Article 4.4. Wholly Obtained Products

1. The following shall be considered as wholly obtained in Turkey or in Malaysia:

(a) minerals and other naturally occurring substances, not included in subparagraphs (b) to (e), extracted or taken from its soil, water, seabed or beneath the seabed of a Party;

(b) plant and plant goods, including fruits, flowers, vegetables, trees, seaweed, fungi and live plants, grown, cultivated, planted, harvested, picked, or gathered in the territory of a Party;

(c) live animals born and raised in the territory of a Party;

(d) products from live animals raised there; (e) goods obtained from hunting, trapping, fishing, farming, cultivating, planting, growing, aquaculture, gathering, or capturing in the territory of a Party;

(f) products of sea fishing and other products taken from the sea including shellfish and other marine life or marine goods outside the territorial waters of Turkey or of Malaysia by their vessels;

(g) goods obtained, processed or produced on board their factory ships exclusively from products referred to in subparagraph (f);

(h) used articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of raw materials;

(i) waste, scrap or used goods collected in the territory of a Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of raw materials;

(j) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law; and

(k) goods produced in the territory of a Party solely from goods referred to in subparagraphs (a) to (j) or from their derivatives, at any stage of production.

2. The terms "their vessels" and "their factory ships" in subparagraphs 1(f) and (g) shall apply only to vessels and factory ships:

(a) which are registered in Turkey or in Malaysia;

(b) which sail under the flag of Turkey or of Malaysia;

(c) which meet one of the following conditions: (i) they are at least 50% owned by nationals of Turkey or of Malaysia; or (ii) they are owned by companies:

(AA) which have their head office and their main place of business in Turkey or in Malaysia; and

(BB) which are at least 50% owned by Turkey or by Malaysia, by public entities or nationals of one of those Parties.

Article 4.5. Sufficiently Worked or Processed Products

1. For the purposes of subparagraph (b) of Article 4.2 (Originating Products), products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex 4-2 are fulfilled. The conditions referred to above indicate, for all products covered by this Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. It follows that if a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

2. By way of derogation from paragraph 1 and subject to paragraphs 3 and 4, non-originating materials which, according to the conditions set out in the list in Annex 4-2 are not to be used in the manufacture of a given product may nevertheless be used, provided that their total value or net weight assessed for the product does not exceed:

(a) 10% of the weight of the product for products falling under Chapter 2 and within Chapters 4 to 24 of the Harmonized System, other than processed fishery products of Chapter 16;

(b) 10% of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 of the Harmonized System, for which the tolerances mentioned in Notes 6 and 7 of Annex 4-1, shall apply.

3. Paragraph 2 shall not allow to exceed any of the percentages for the maximum content of non-originating materials as specified in the rules laid down in the list in Annex 4-2. 4.

Paragraphs 2 and 3 shall not apply to products wholly obtained in a Party within the meaning of Article 4.4 (Wholly Obtained Products). However, without prejudice to Article 4.6 (Insufficient/Minimal Working or Processing) and paragraph 2 of Article 4.7 (Unit of Qualification), the tolerance provided for in those paragraphs shall nevertheless apply to the sum of all the materials which are used in the manufacture of a product and for which the

rule laid down in the list in Annex 4-2 for that product requires that such materials be wholly obtained.

Article 4.6. Insufficient/minimal Working or Processing

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 4.5 (Sufficiently Worked or Processed Products) are satisfied:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages; change of packaging or presenting products for sale;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) simple painting and polishing operations;
- (e) sharpening, slitting, simple coiling and uncoiling, bending, simple grinding or simple cutting;
- (f) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (g) ironing or pressing of textiles;
- (h) husking, partial or total bleaching, polishing, and glazing of cereals and rice; (i) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (j) peeling, stoning and shelling of fruits, nuts and vegetables;
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple addition of water or dilution or dehydration or denaturation of products;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (p) slaughter of animals; and
- (q) a combination of two or more operations specified in subparagraphs (a) to (p).

2. All operations carried out either in Turkey or in Malaysia on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1. 3. For the purposes of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.

Article 4.7. Unit of Qualification

1. The unit of qualification for the application of the provisions of this Chapter shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. It follows that:

- (a) when a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of

qualification;

(b) when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Chapter.

2. Where, under General Rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

Article 4.8. Accessories, Spare Parts and Tools

1. Accessories, spare parts, tools and instructional or other information materials delivered with a good that form part of the good's standard accessories, spare parts, tools and instructional or other information materials shall be regarded as a part of the good, and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification provided that:

(a) the accessories, spare parts, tools and instructional or other information materials are classified with and not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for the good.

2. The value of packages and packing materials for retail sale, shall be taken into account in determining the origin of that good as originating or non-originating, as the case may be, provided that the packages and packing materials are considered to be forming a whole with the good.

3. If a good is subject to the change in tariff classification criterion provided in Annex 4-2, packages and packing materials classified together with the packaged good, shall not be taken into account in determining origin.

4. Packing materials and containers used exclusively for the transportation of a good shall not be taken into account in determining the origin of such goods.

Article 4.9. Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15% of the ex-works price of the set.

Article 4.10. Neutral Elements

In order to determine whether a product originates, it shall not be necessary to determine the origin of the following, which might be used in its production and not physically incorporated into the good, which includes the following:

(a) energy, fuel, catalysts and solvents;

(b) plant and equipment;

(c) machines, tools, dies and moulds;

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

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

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

(g) goods which do not enter and which are not intended to enter into the final composition of the product. TERRITORIAL REQUIREMENTS

Article 4.11. Principle of Territoriality

1. Except as provided for in Article 4.3 (Cumulation of Origin), the conditions set out in Section 4-B (Definition of the Concept of "Originating Products") relating to the acquisition of originating status must be fulfilled without interruption in a Party.

2. If originating goods exported from a Party to a non-Party return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

- (a) the returning goods are the same as those exported; and
- (b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that non-Party or while being exported.

Article 4.12. Direct Consignment

1. The products declared for importation in a Party shall be the same products as exported from the other Party in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, prior to being declared for import. Storage of products or consignments and splitting of consignments may take place where carried out under the responsibility of the exporter or of a subsequent holder of the goods and the products remain under customs supervision in the country(ies) of transit.

2. Compliance with paragraph 1 shall be considered as satisfied unless the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.

Article 4.13. Exhibitions

1. Originating products sent for exhibition in a third country and sold after the exhibition for importation in Turkey or in Malaysia shall benefit on importation from the provisions of the Agreement, provided it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from Turkey or from Malaysia to the country in which the exhibition is held and has exhibited them there;
- (b) the products have been sold or otherwise disposed of by that exporter to a person in Turkey or in Malaysia;
- (c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and
- (d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A proof of origin must be issued or made out in accordance with the provisions of Section 4-E (Proof of Origin) and submitted to the customs authorities of the importing Party in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display, which is not organized for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control. DRAWBACK OR EXEMPTION

Article 4.14. Drawback of, or Exemption from, Customs Duties

After two years from the entry into force of this Agreement, upon the request of either Party, the Joint Committee shall review the operation of duty drawback and inward processing schemes of the Parties. The Joint Committee may establish the criteria to review duty drawback and inward processing issues of the Parties and may consider prohibiting the application of duty drawback. PROOF OF ORIGIN

Article 4.15. General Requirements

1. Products originating in Turkey shall, on importation into Malaysia and products originating in Malaysia shall, on importation into Turkey, benefit from this Agreement upon submission of either: (a) a Certificate of Origin, a specimen of which appears in Annex 4-3; or (b) in the cases specified in paragraph 1 of Article 4.21 (Conditions for Invoice Declaration), a declaration, the text of which appears in Annex 4-4, given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified (hereinafter referred to as the "invoice declaration").

2. Notwithstanding paragraph 1, originating products within the meaning of this Chapter shall, in the cases specified in Article 4.27 (Exemption from Proof of Origin), benefit from this Agreement without it being necessary to submit any of the documents referred to above.

Article 4.16. Procedure for the Issuance of Certificate of Origin

1. A Certificate of Origin shall be issued by the competent authorities of the exporting Party on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorized representative.

2. For this purpose, the exporter or his authorized representative shall fill out Certificate of Origin specimen of which appears in Annex 4-3. The form shall be completed in English and in accordance with the provisions of the domestic law of the exporting Party. If it is handwritten, it shall be completed clearly and legibly in ink and printed characters. In that case, neither erasures nor alterations shall be allowed on the form. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line must be drawn below the last line of the description, the empty space being crossed through.

3. The exporter applying for the issue of Certificate of Origin shall be prepared to submit at any time, at the request of the competent authorities of the exporting Party where the Certificate of Origin is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Chapter.

4. A Certificate of Origin shall be issued by the competent authorities of Turkey or of Malaysia if the products concerned can be considered as products originating in Turkey or in Malaysia and fulfil the other requirements of this Chapter.

5. The competent authorities issuing Certificate of Origin shall take any steps necessary to verify the originating status of the products and the fulfilment of the other requirements of

this Chapter. For this purpose, the Customs Authorities shall, in accordance with its domestic legislation, have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

6. The issuing competent authorities shall also ensure that the form referred to in paragraph 2 is duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.

7. The date of issue of Certificate of Origin shall be indicated in Box 11 of the certificate. 8. A Certificate of Origin shall be issued by the competent authorities and made available to the exporter as soon as actual exportation has been effected or made known.

Article 4.17. Certificate of Origin Issued Retrospectively

1. Notwithstanding paragraph 8 of Article 4.16 (Procedure for the Issuance of Certificate of Origin), a Certificate of Origin may exceptionally be issued after exportation but not later than 12 months from the date of exportation of the products to which it relates if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or (b) it is demonstrated to the satisfaction of the customs authorities or other competent authorities that a Certificate of Origin was issued, but was not accepted at importation for technical reasons.

2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the Certificate of Origin relates, and state the reasons for his request.

3. The competent authorities may issue a Certificate of Origin retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file. 4. Certificate of Origin issued retrospectively must bear with the words "ISSUED RETROSPECTIVELY". The endorsement shall be inserted in the 'Remarks' box of the Certificate of Origin.

Article 4.18. Issuance of a Duplicate Certificate of Origin

1. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply to the competent authorities which issued it for a duplicate to be made out on the basis of the export documents in their possession.

2. The duplicate Certificate of Origin will indicate the date of issuance of the original Certificate of Origin and shall take effect as from the original date.

Article 4.19. Issuance of Certificate of Origin on the Basis of a Proof of Origin Issued or Made Out Previously

When originating products are placed under the control of a customs office in Turkey or Malaysia, the original proof of origin may be replaced by one or more proof of origin for the purpose of sending all or some of these products elsewhere within a Party. The replacement proof(s) of origin shall be issued by the customs office in Turkey under whose control the products are placed or competent authorities in Malaysia.

Article 4.20. Identical and Interchangeable Materials

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

Article 4.21. Conditions for Invoice Declaration

1. An invoice declaration as referred to in subparagraph 1(b) of Article 4.15 (General Requirements) may be made out: (a) by an approved exporter within the meaning of Article 4.22 (Approved Exporter); or (b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed USD10,000.

2. An invoice declaration may be made out if the products concerned can be considered as products originating in Turkey or in Malaysia and fulfil the other requirements of this Chapter.

3. The exporter making out an invoice declaration shall be prepared to submit at any time, at the request of the customs authorities or other competent authorities of the exporting Party, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Chapter.

4. An invoice declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration in English, the text of which appears in Annex 4-4, and in accordance with the provisions of the domestic law of the exporting Party. If they are handwritten, they shall be completed clearly and legibly in ink in printed characters. In that case, neither erasures nor alterations shall be allowed on these forms.

5. Invoice declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 4.22 (Approved Exporter) shall not be required to sign such declarations provided that he gives the customs authorities or other competent authorities of the exporting Party a written undertaking that he accepts full responsibility for any invoice declaration which identifies him as if it had been signed in manuscript by him. 6. An invoice declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing Party no longer than 12 months after the importation of the products to which it relates.

Article 4.22. Approved Exporter

1. The competent authorities of the exporting Party may authorize any exporter as "approved exporter" who makes frequent shipments of products under this Agreement to make out invoice declarations irrespective of the value of the products concerned. An exporter seeking such authorisation must offer to the satisfaction of the competent authorities evidence of the originating status of the products as well as the fulfilment of the other requirements of this Chapter.

2. The competent authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.

3. The competent authorities shall grant to the approved exporter a customs authorisation number or reference number which shall appear on the invoice declaration.

4. The competent authorities shall monitor the use of the authorization by the approved exporter.

5. The competent authorities may withdraw the authorization at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in paragraph 1, does not fulfil the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorization.

6. The competent authorities responsible for the implementation of the verification of proof of origin within the meaning of Article 4.33 (Verification of Proofs of Origin) may inform each other on the changes in granting authorizations to the approved exporters and may also mutually exchange the updated lists.

Article 4.23. Third Party Invoice

The competent authorities of the importing Party may accept Certificate of Origin or invoice declaration in cases where the invoice is issued either by a company located in a third country or by an exporter for the account of that company, provided that the goods meet the requirements of this Chapter.

Article 4.24. Validity of Proof of Origin

1. A proof of origin shall be valid for 12 months from the date of issue in the exporting Party, and must be submitted within the said period to the customs authorities of the importing Party.

2. Proofs of origin which are submitted to the customs authorities of the importing Party after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances. 3. In other cases of late presentation, the customs authorities of the importing Party may accept the proofs of origin where the products have been presented to customs before the said final date.

Article 4.25. Submission of Proof of Origin

Proofs of origin shall be submitted to the customs authorities of the importing Party in accordance with the procedures applicable in that country. The said authorities may require a translation of a proof of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the requirements of this Chapter.

Article 4.26. Importation by Instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XVI and XVII or heading Nos. 7308 and 9406 of the Harmonized System are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

Article 4.27. Exemptions from Proof of Origin

1. Products sent as small packages from private persons to private persons from Malaysia to Turkey or forming part of travellers' personal luggage travelling from Malaysia to Turkey shall

be admitted as originating products without requiring the submission of a proof of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Chapter and where there is no doubt as to the veracity of such a declaration. In the case of products sent by post from Malaysia to Turkey, this declaration can be made on the customs declaration CN22/CN23 or on a sheet of paper annexed to that document.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families from Malaysia to Turkey shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

3. Furthermore, the total value of these products referred to paragraphs 1 and 2 shall not exceed EUR500 in the case of small packages or EUR1,200 in the case of products forming part of travellers' personal luggage.

4. In the case of consignments of goods originating in Turkey and exported to Malaysia and not exceeding USD200 FOB, the requirement of a proof of origin may be waived, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of proof of origin.

Article 4.28. Supporting Documents

The documents referred to in paragraph 3 of Article 4.16 (Procedure for the Issuance of Certificate of Origin) and paragraph 3 of Article 4.21 (Conditions for Invoice Declaration) used for the purpose of proving that products covered by a Certificate of Origin or an invoice declaration can be considered as products originating in Turkey or in Malaysia and fulfil the other requirements of this Chapter may consist, inter alia, of the following:

- (a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;
- (b) documents proving the originating status of materials used, issued or made out in Turkey or in Malaysia;
- (c) documents proving the working or processing of materials in Turkey or Malaysia, issued or made out in Turkey or in Malaysia; and/or
- (d) Certificate of Origin or invoice declarations proving the originating status of materials used, issued or made out in Turkey or in Malaysia in accordance with this Chapter.

Article 4.29. Preservation of Proof of Origin and Supporting Documents

1. The exporter applying for the issue of a Certificate of Origin shall keep for at least three years the documents referred to in paragraph 3 of Article 4.16 (Procedure for the Issuance of Certificate of Origin).

2. The exporter making out an invoice declaration shall keep for at least three years a copy of this invoice declaration as well as the documents referred to paragraph 3 of Article 4.21 (Conditions for Invoice Declaration).

3. The competent authorities of the importing Party shall keep for at least three years the Certificate of Origins and the invoice declarations submitted to them.

Article 4.30. Discrepancies and Formal Errors

1. The discovery of slight discrepancies between the statements made in the proof of origin and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products may not ipso facto render the proof of origin null and void if it is duly established that this document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Article 4.31. Amounts Expressed In Usd or Eur

1. For the application of the provisions of subparagraph 1(b) of Article 4.21 (Conditions for Invoice Declaration) and Article 4.27 (Exemption from Proof of Origin) in cases where products are invoiced in a currency other than USD or EUR, amounts in the national currencies of Turkey and of Malaysia equivalent to the amounts expressed in USD or EUR shall be fixed annually by each of the countries concerned.

2. A consignment shall benefit from the provisions of subparagraph 1(b) of Article 4.21 (Conditions for Invoice Declaration) or Article 4.27 (Exemption from Proof of Origin) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the country concerned.

3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in USD or EUR as at the first working day of October and shall be applied from 1 January the following year. The Parties shall communicate the amounts to each other by 15 October.

4. Turkey or Malaysia may round up or down the amount resulting from the conversion into its national currency of an amount expressed in USD or EUR. The rounded-off amount may not differ from the amount resulting from the conversion by more than 5%. Turkey or Malaysia may retain unchanged its national currency equivalent of an amount expressed in USD or EUR if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15% in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion would result in a decrease in that equivalent value.

5. The amounts expressed in USD or EUR shall be reviewed by the Joint Committee at the request of Turkey or of Malaysia. When carrying out this review, the Joint Committee shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in USD or EUR.

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

Article 4.32. Mutual Assistance

1. Each Party shall inform the other Party of the names and addresses of its respective Competent Authorities to issue the Certificate of Origin and verify the proofs of origin, and shall provide the official seals used by the said authorities. Any change in names, addresses, specimen signatures or official seals shall be promptly informed in the same manner.

2. In order to ensure the proper application of this Chapter, Turkey and Malaysia shall assist each other, through the competent customs administrations and relevant competent and duly

authorized bodies, in checking the authenticity of the Certificate of Origin or the invoice declarations and the correctness of the information given in these documents.

Article 4.33. Verification of Proof of Origin

1. The Competent Authority of the importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its domestic laws, regulations or administrative practices.

2. If the Competent Authority of the importing Party has reasonable doubts as to the authenticity or accuracy of the information included in the Certificate of Origin or other documentary evidence, it may:

(a) institute retroactive checking measures to establish the validity of the Certificate of Origin or other documentary evidence of origin;

(b) request information from the relevant importer of a good for which preferential tariff treatment was claimed; or

(c) issue written requests to the Issuing Authority of the exporting Party for information from the exporter or producer. 3. The Competent Authority of the exporting Party shall provide the information requested under paragraph 2 within a period of 90 days from the date the written request is made.

4. The reply of the Competent Authority of the exporting Party must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in Turkey or Malaysia and fulfil the other requirements of this Chapter.

5. If the reply does not have the necessary details in paragraph 4, the Competent Authority of the importing Party shall provide written advice as to whether the goods are eligible for preferential tariff treatment to the exporting Party within 90 days from the receipt of reply of the exporting Party. The exporting Party shall provide a reply within 90 days from the date of the written advice to the importing Party to make the final decision.

6. If there is no reply from the Competent Authority of the exporting Party within 90 days under paragraph 3 or if there is no reply from the Competent Authority of the exporting Party within 180 days according to paragraph 5 or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the Competent Authority of the importing Party shall, except in exceptional circumstances, refuse entitlement to the preferences.

Article 4.34. Suspension of Preferential Tariff Treatment

1. The Customs Authorities of the importing Party may suspend preferential tariff treatment to goods that are the subject of an origin verification action under this Chapter for the duration of that action or any part thereof.

2. The Customs Authorities of the importing Party may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

3. In the event that a determination is made by the Competent Authority of the importing Party that the goods qualify as the originating goods of the exporting Party, the preferential tariff treatment shall be implemented.

Article 4.35. Penalties

Penalties shall be imposed, in accordance with domestic laws and regulations, on any person who draws up, or causes to be drawn up, a document which contains false information for the purpose of obtaining a preferential treatment for products. FINAL PROVISIONS

Article 4.36. Sub-committee on Rules of Origin

1. A Sub-Committee on Rules of Origin shall be set up under the Joint Committee to assist it in carrying out its duties and to ensure a continuous information and consultations process between experts.

2. The functions of the Sub-Committee on Rules of Origin shall include:

- (a) monitoring of the implementation and administration of this Chapter;
- (b) discussion of any issues that may arise in the course of implementation;
- (c) discussion of any proposed amendments of the rules of origin under this Chapter;
- (d) consultation on issues relating to rules of origin and administrative cooperation; and
- (e) discussion on any issues that may arise in relation to the verification under Article 4.33 (Verification of Proof of Origin) which cannot be settled between the competent authorities responsible for carrying out the verification.

Article 4.37. Transitional Provisions for Goods In Transit and Storage

Originating goods which are in the process of being transported from the exporting Party to the importing Party, or which are in temporary storage in a bonded area in the importing Party, should be accorded preferential tariff treatment if they are imported into the importing Party on or after the date of entry into force of this Agreement, subject to the submission of a Certificate of Origin issued retrospectively, within 12 months of that date, to the Customs Authority of the importing Party and subject to domestic laws, regulations or administrative practices of the importing Party.

Article 4.38. Review and Appeal

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.

Chapter 5. Customs Procedures and Cooperation

Article 5.1. Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;
- (b) promote efficient, economical administration of customs procedures, and the expeditious clearance of goods;
- (c) simplify customs procedures; and (d) promote cooperation between the customs administrations of the Parties.

Article 5.2. Scope

This Chapter applies, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded between the Parties.

Article 5.3. Definitions

For the purposes of this Chapter:

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

(b) customs procedures means the treatment applied by the customs administration of each Party to goods, which are subject to customs law.

Article 5.4. Customs Procedures and Facilitation

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

2. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective customs laws, conform to the standards and recommended practices of the World Customs Organization.

3. The customs administration of each Party shall review its customs procedures with a view to their simplification to facilitate trade.

Article 5.5. Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders, the customs administrations shall regularly review these procedures.

2. Where a customs administration deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, it shall endeavour to provide a single point for the documentary or electronic processing of those goods.

Article 5.6. Advance Rulings

1. Each Party, through its customs administration or other relevant authorities, to the extent permitted by their domestic laws, regulations and administrative determinations, on the application of a person referred in subparagraph 2(a), shall provide in writing advance rulings in respect of the tariff classification.

2. Where available, each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer in its territory may apply for an advance ruling before the importation of goods in question;

(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

(c) provide that its customs administration may, at any time during the course of an

evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision maker; and

(e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's domestic laws, regulations or administrative determinations.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with subparagraph 2(c) is not provided within a specified time.

4. Subject to paragraphs 1 and 5 and where available, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory for the period as specified in that Party's domestic laws, regulations or administrative determinations.

5. A Party may modify or revoke an advance ruling where there is a determination that the advance ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, or if there is a change in:

(a) domestic law;

(b) a material fact; or

(c) the circumstances, on which the ruling is based.

6. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

Article 5.7. Use of Automated Systems

1. The customs administrations, where applicable, shall endeavour to have their own system that supports electronic customs transactions.

2. In implementing initiatives, each customs administration shall take into account the relevant standards and best practices recommended by the World Customs Organization, taking into consideration the available infrastructures and capabilities of each Party.

Article 5.8. Customs Cooperation

1. To the extent permitted by their domestic law, the customs administrations of the Parties may, as deemed appropriate, assist each other, in relation to:

(a) the implementation and operation of this Chapter;

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

(c) providing, where possible, prior notice of changes to laws, regulations, and relevant procedures and guidelines that would affect the operation of this Agreement;

(d) simplifying and harmonising customs procedures;

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

(f) application of the Agreement on Customs Valuation.

2. Subject to available resources, the customs administrations of the Parties may, as deemed appropriate, explore and undertake cooperation projects, including capacity building programmes to enhance the capability of their customs personnel.

Article 5.9. Transparency

Each Party shall ensure that its customs laws, regulations and general administrative procedures and other requirements, including customs fees and charges, are readily available to all interested parties wherever possible in electronic form.

Article 5.10. Contact Points

Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters.

Article 5.11. Consultation

The customs administrations of the Parties will encourage consultation with each other regarding significant customs issues that affect goods traded between the Parties.

Article 5.12. Confidentiality

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

- (a) be contrary to the public interest as determined by its legislation;
- (b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) impede law enforcement; or
- (d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.

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

Article 5.13. Review and Appeal

1. Each Party shall ensure that the importers in its territory have access to administrative review within the customs administration that issued the decision subject to review or where applicable, the higher authority supervising the administration and/or judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic laws.

2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. 3. The level of institution to carry out administrative review may include any authority in accordance with the Party's domestic laws.

Chapter 6. Sanitary and Phytosanitary Measures

Article 6.1. Objectives

The objectives of this Chapter are:

- (a) to facilitate bilateral trade in food, plants, animals and products thereof, while protecting human, animal or plant life or health in the territory of each Party;
- (b) to deepen mutual understanding of each Party's regulations and procedures relating to

consultations on and implementation of sanitary and phytosanitary measures;
(c) to strengthen cooperation between the Parties' competent authorities that have the responsibility for sanitary and phytosanitary matters; and (d) to provide a means to enhance communication and improve resolution of sanitary and phytosanitary issues.

Article 6.2. Scope and Coverage

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.3. Definitions

For the purposes of this Chapter:

- (a) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;
- (b) the definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*; and
- (c) the relevant definitions developed by the Codex Alimentarius Commission, World Organisation for Animal Health and the International Plant Protection Convention shall apply to the implementation of this Chapter.

Article 6.4. General Provisions

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. With a view to facilitating and increasing bilateral trade, the Parties shall seek to enhance their cooperation in the area of sanitary and phytosanitary measures and deepen their mutual understanding and awareness of their respective systems.
3. The Parties shall seek to identify initiatives for cooperation on regulatory issues, such as bilateral recognition of equivalence, harmonisation based on international standards, guidelines and recommendations, or other cooperative arrangements.
4. The Parties shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Article 6.5. Sub-committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as "the Sub-Committee on SPS Measures") comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters. The Sub-Committee on SPS Measures shall report to the Joint Committee of its activities.
2. The Sub-Committee on SPS Measures shall provide a forum for:
 - (a) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
 - (b) coordinating technical cooperation programmes on sanitary and phytosanitary matters;
 - (c) enhancing bilateral understanding on issues and agendas for meetings of the Committee on Sanitary and Phytosanitary Measures of the WTO and the other relevant international organisations referred to in the SPS Agreement, including specific implementation issues thereof;

(d) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' competent authorities that are responsible for such matters; and
(e) discussing matters with a view to reaching a consensus related to consultation procedure referred to in subparagraph (a).

3. The Sub-Committee on SPS Measures shall meet in a period no later than one year after the date of entry into force of this Agreement. The rules of procedure of the Sub-Committee on SPS Measures shall be determined in its first meeting.

4. The Sub-Committee on SPS Measures shall inform the Joint Committee about the rules of procedure.

5. The Sub-Committee on SPS Measures shall meet on the request of either Party. By mutual agreement, ad hoc working groups may be established if necessary.

Article 6.6. Competent Authorities and Contact Points

1. The Competent Authorities and the Contact Points responsible for the implementation of the measures referred to in this Chapter are listed in Annex 6-1. 2. The Parties shall inform each other of any significant changes in the structure, organisation and division of the competency of its Competent Authorities and Contact Points.

Article 6.7. Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration and information exchange on sanitary and phytosanitary matters of mutual interest consistent with the provisions of this Chapter. Such opportunities include technical assistance, capacity building and facilitation of market access for products of interest.

2. The Parties agree to cooperate to facilitate the implementation of this Chapter.

Article 6.8. Dispute Settlement

Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 (Dispute Settlement) for any disputes or differences arising from this Chapter.

Chapter 7. Technical Barriers to Trade

Article 7.1. Objectives

The objectives of this Chapter are to increase and facilitate bilateral trade, by preventing and eliminating unnecessary obstacles to trade and enhancing bilateral cooperation in accordance with the rights and obligations of the Parties with respect to the WTO Agreement on Technical Barriers to Trade and its Annexes (hereinafter referred to as "TBT Agreement").

Article 7.2. Scope and Coverage

1. Except as provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.

2. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

3. This Chapter does not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies.

Article 7.3. Reaffirmation of Tbt Agreement

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

Article 7.4. International Standards

1. The Parties reconfirm their obligations under Article 4.1 of the TBT Agreement to ensure that the standardising bodies of the Parties accept and comply with the Code of Good Practice for the Preparation and Adoption of Standards in Annex 3 to the TBT Agreement, and also have regard to the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/rev.11, 16 December 2013, Annex B (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the TBT Committee of the WTO.

2. The Parties shall use relevant international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement.

Article 7.5. Equivalence of Technical Regulations

Consistent with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

Article 7.6. Trade Facilitation

1. The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties.

2. To this end, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

- (a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;
- (b) alignment with international standards;
- (c) reliance on a supplier's declaration of conformity;
- (d) use of accreditation to qualify conformity assessment bodies; and
- (e) cooperation through recognition of conformity assessment procedures.

Article 7.7. Conformity Assessment Procedures and Accreditation

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

- (a) voluntary arrangements between conformity assessment bodies from each Party's territory;
- (b) agreements on mutual acceptance of the results of conformity assessment procedures

with respect to specified regulations conducted by bodies located in the other Party's territory;

(c) unilateral recognition by one Party of the results of conformity assessments procedures performed in the other Party's territory; (d) accreditation procedures for qualifying conformity assessment bodies and promotion of the recognition of accreditation and certification bodies under international mutual recognition arrangements;

(e) government designation of conformity assessment bodies;

(f) reliance on a supplier's declaration of conformity, where appropriate; and

(g) use of regional and international multilateral recognition agreements and arrangements which the Parties are party to.

2. Having regard to paragraph 1, the Parties undertake:

(a) to intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results;

(b) to exchange information on conformity assessment procedures, and in particular on the criteria used to select appropriate conformity assessment procedures for specific products;

(c) to exchange information on accreditation policy, and to consider how to make best use of international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation and the International Accreditation Forum; and (d) in line with Article 5.1.2 of the TBT Agreement, to require conformity assessment procedures that are not more strict than necessary.

3. In consideration of the recognition of the broad range of mechanisms to facilitate the acceptance of the results of a conformity assessment procedure and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved.

4. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory, to the extent of each other's obligations under International Laboratory Accreditation Cooperation and the International Accreditation Forum.

Article 7.8. Transparency

1. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement. Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

2. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically through the

enquiry point referenced in subparagraph 1(b).

3. Upon request, a Party shall provide the other Party information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that it has adopted or is proposing to adopt.

Article 7.9. Technical Cooperation

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

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

(b) exchanging general information and publications on conformity assessment, certification bodies, including notified bodies, designation and accreditation of conformity assessment bodies;

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

(d) increasing the information exchange, particularly regarding non-compliance of a product in bilateral trade with relevant technical regulations and conformity assessment procedures of a Party;

(e) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;

(f) giving favourable consideration, on request of the other Party, to any sector specific proposal for further cooperation;

(g) promoting and encouraging bilateral cooperation between respective organisations, public and/or private, of the Parties responsible for standardisation, testing, certification, accreditation and metrology;

(h) increasing their bilateral cooperation in the relevant international organisations and fora dealing with the issues covered by this Chapter; and (i) informing the other Party, as far as possible, about the agreements or programs subscribed at international level in relation to TBT issues.

Article 7.10. Sub-committee on Standards, Technical Regulations and Conformity Assessment Procedures

1. The Parties hereby establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (hereinafter referred to as "Sub-Committee on TBT Matters"), comprising representatives of each Party.

2. For purposes of this Article, the Sub-Committee on TBT Matters shall be coordinated by:

(a) in the case of Turkey, Directorate General for Product Safety and Inspection, Ministry of Economy, or its successor; and (b) in the case of Malaysia, the Department of Standards Malaysia, Ministry of Science, Technology and Innovation or its successor.

3. In order to facilitate the communication and ensure the proper functioning of the Sub-Committee on TBT Matters, the Parties will designate a contact point no later than two months following the date of entry into force of this Agreement.

4. The functions of the Sub-Committee on TBT Matters shall include:

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

- (b) promptly addressing any issue that a Party raises related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
- (d) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
- (e) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
- (f) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;
- (g) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
- (h) consulting on any matter arising under this Chapter upon a Party's request;
- (i) reviewing this Chapter in light of any development under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments;
- (j) reporting to the Joint Committee on the implementation of this Chapter as it considers appropriate; and
- (k) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them.

5. The Sub-Committee on TBT Matters shall meet at least once a year, unless otherwise agreed by the Parties. By mutual agreement, ad hoc working groups may be established if necessary.

6. The rules of procedures of the Sub-Committee on TBT Matters shall be mutually agreed by the Parties. The Sub-Committee on TBT Matters shall inform the Joint Committee about its rules of procedure.

Article 7.11. Information Exchange

Any information or explanation provided upon request of a Party pursuant to the provisions of this Chapter shall be provided in print or in electronic form within a reasonable period of time agreed between the Parties.

Article 7.12. Dispute Settlement

Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 (Dispute Settlement) for any disputes and differences arising from this Chapter.

Chapter 8. Trade Remedies

Article 8.1. Definitions

For the purposes of this Section:

- (a) domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (b) provisional measure means a provisional bilateral safeguard measure described in

Article 8.5 (Provisional Measures);

(c) safeguard measure or safeguard measures means a transitional bilateral safeguard measure or measures described in Article 8.2 (Application of Safeguard Measures);

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

(e) threat of serious injury means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and

(f) transition period, in relation to a particular product, means the period from the entry into force of this Agreement until two years after the date on which the customs duty on that product is to be eliminated in accordance with Annex 3-1.

Article 8.2. Application of Safeguard Measures

During the transition period, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating product of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products, the other Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

(a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the originating product from the date on which the action to apply the safeguard measure is taken; or

(b) an increase of the rate of customs duty on the originating product to a level not to exceed the lesser of:

(i) the MFN applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; or

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

Article 8.3. Scope and Duration of Safeguard Measures

1. A Party shall apply a safeguard measure for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to one year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a safeguard measure, including any extensions thereof, shall not exceed three years.

2. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a product shall terminate at the end of the transition period for such product. No new safeguard measure may be applied to a product after the end of the transition period.

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

4. A Party shall not apply a safeguard or provisional measure again on the same originating product.

5. An investigation shall be promptly terminated without any bilateral safeguard measure being applied if imports of the originating good represent less than eight % of total imports.

6. A Party shall not apply a safeguard or provisional measure on an originating product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards (hereinafter referred to as the "Safeguards Agreement"), or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 (hereinafter referred to as the "Anti-dumping Agreement").

7. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the Anti-dumping Agreement, a measure on a product to which a safeguard measure is being applied, it shall terminate the safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the Anti-dumping Agreement.

8. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty in effect as set out in its Tariff Schedule as specified in Annex 3-1 on the date of termination as if the safeguard measure had never been applied.

Article 8.4. Investigation

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the Safeguards Agreement.

2. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest.

3. An investigation shall as far as possible be completed within 180 days after being initiated but in no case shall exceed one year. A Party shall prior to the 180th day notify the other Party of the expected duration of the investigation, if the investigation is likely to take more than 180 days to complete. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

4. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings relating to all safeguard investigation proceedings.

5. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

Article 8.5. Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional measure, which shall take the form of the measure set out in paragraphs (a) or (b) of Article 8.2 (Application of Safeguard Measures), pursuant to a preliminary determination that there is clear evidence that increased imports of an

originating product of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury.

2. The duration of a provisional measure shall as far as possible not exceed 120 days, but shall not extend beyond 200 days, during which period the pertinent requirements of Articles 8.1 (Definitions) to 8.4 (Investigation) shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 8.3 (Scope and Duration of Safeguard Measures).

3. Any additional customs duties collected as a result of such provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 8.4 (Investigation) does not determine that increased imports of an originating product of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the provisional measure shall apply the rate of customs duty set out in its Tariff Schedule in Annex 3-1 as if the provisional measure had never applied.

Article 8.6. Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:

- (a) initiating an investigation under Article 8.4 (Investigation);
- (b) making a finding of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty on the product pursuant to this Agreement;
- (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
- (d) taking a decision to progressively liberalise a safeguard measure previously applied.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under paragraph 1 of Article 8.4 (Investigation) immediately after it is available.

3. In the written notice referred to in paragraph 1(a), the reason for the initiation of the investigation, a precise description of an originating product subject to the investigation and its subheading or more detailed level of the HS, the period subject to the investigation and the date of initiation of the investigation shall be included.

4. In notifying under paragraphs 1(b) and (c), the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement; a precise description of the product involved and its subheading or more detailed level of the HS; the details of the proposed safeguard measure; and the date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, inter alia, reviewing the information provided under paragraph 4, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in paragraph 1 of Article 8.7 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 8.5 (Provisional Measures), on request of the other Party, consultations shall be initiated immediately after

such application.

7. The provisions on notification in this Article shall not require a Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 8.7. Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with paragraph 5 of Article 8.6 (Notification and Consultation), shall take place prior to the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years during which a bilateral safeguard measure is in effect, provided that the measure has been taken as a result of an absolute increase in imports.

Article 8.8. Dispute Settlement

1. Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 (Dispute Settlement). Any issue, difference or dispute between the Parties concerning the interpretation, implementation or application of any of the provisions of this Section shall be settled amicably through consultation and negotiation between the Parties pursuant to Article 8.6 (Notification and Consultation).

2. Any issue, difference or dispute between the Parties in respect of this Section, which cannot be resolved by the Parties pursuant to paragraph 1, shall be referred to the Joint Committee. GLOBAL SAFEGUARDS

Article 8.9. Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement, and any other relevant provisions in the WTO Agreement, and their successors.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and their successors. 3. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section. ANTI-DUMPING MEASURES

Article 8.10. General Provisions

1. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the Anti-Dumping Agreement.

2. Except otherwise stipulated in this Section, this Agreement does not confer any additional rights or obligations on the Parties with regard to the initiation and conduct of dumping investigations as well as the application of anti-dumping measures, referred to in paragraph 1.

Article 8.11. Lesser Duty

If a Party takes a decision to impose anti-dumping duties on the condition that the level of anti-dumping duty is sufficient to remove the injury, that Party is expected to impose a duty lesser than the dumping margin.

Article 8.12. Recommendations of the Wto Committee on Anti-dumping Practices

Each Party may, in all investigations conducted against goods from the other Party, take into account the recommendations of the WTO Committee on Anti-Dumping Practices.

Article 8.13. Notification

1. After the initiation of an anti-dumping investigation, the initiating Party shall provide the notification required by Article 12.1.1 of Anti-Dumping Agreement in writing as soon as possible to the other Party.

2. The Parties shall make the notifications under Article 5.5 of Anti-Dumping Agreement and cover letters related to mentioned notifications in English.

Article 8.14. Contact Point

1. Both Parties shall make the required notifications referred to under Article 8.13 (Notification) to investigating authorities in addition to the Embassies.

2. In case of any dispute regarding the date of the notification related to paragraph 1, the notification date sent to the Embassies is deemed as binding.

Article 8.15. Dispute Settlement

Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section. COOPERATION IN PREVENTING CIRCUMVENTION

Article 8.16. Areas of Cooperation

1. The Parties shall endeavour to cooperate in preventing circumvention of trade remedies. The areas of cooperation are as follows:

- (a) forwarding questionnaires and other documents to interested parties;
- (b) exchanging information about firms and whole sector;
- (c) exchanging trade data and similar information regarding products under circumvention investigation; and
- (d) any other possible areas to be mutually agreed by the Parties.

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

- (a) be contrary to the public interest as determined by its laws;
- (b) be contrary to any of its laws, including but not limited to, to those protecting personal

data or financial affairs and accounts of individual customers of financial institution;
(c) impede law enforcement; and
(d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.

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

4. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section. COUNTERVAILING MEASURES

Article 8.17. Countervailing Measures

1. Each Party shall retain its rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures.

2. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section. COOPERATION

Article 8.18. Cooperation

1. The Parties shall explore opportunities for cooperation, collaboration and information exchange which is of mutual interest, consistent with the provisions of this Chapter. Such opportunities include technical assistance, capacity building and development of training programmes related to the administration of the trade remedy laws.

2. The Parties agree to cooperate to facilitate the implementation of this Chapter.

Chapter 9. Economic and Technical Cooperation

Article 9.1. Objectives

1. Without prejudice to the provisions of the existing agreements between the Parties in the fields of the trade, economic and technical cooperation, the Parties agree to establish a framework for cooperation as a means to expand and enhance the benefits of this Agreement to promote capacity building activities in areas of mutual interest.

2. The Parties will establish close cooperation, inter alia, at:

(a) promoting and enhancing economic and technical cooperation in accordance with the applicable laws and regulations between them;

(b) complementing existing and building new cooperative relationships between them;

(c) advancing human resources development, creating new opportunities for trade and investment, promoting competitiveness and innovation including the involvement, where appropriate, of their private sectors;

(d) contributing to the important role of their private sectors in promoting and building strategic alliances to encourage mutual economic growth and development;

(e) encouraging the presence of each other's goods, services and investments in their respective markets; and

(f) increasing and deepening the level of cooperation activities between them in areas of mutual interest.

Article 9.2. Scope

1. The Parties shall exert their best efforts to:

- (a) focus on areas likely to bring the economies of the Parties closer;
- (b) encourage capacity building and training programmes, which would assist in creating the necessary institutions and human resources for implementation of this Agreement;
- (c) encourage joint-ventures, joint-investments and other forms of collaboration amongst their private sectors;
- (d) promote joint marketing and promotion of the Parties' products and services in both countries' markets and third countries' markets.

2. The cooperation under the scope of this Agreement shall primarily involve, but not limited to the following areas referred in detail between Articles 9.3 to 9.17 of this Chapter:

- (a) services;
- (b) investment promotion;
- (c) small and medium-sized enterprises (SMEs);
- (d) trade development;
- (e) agriculture and food industry;
- (f) transportation;
- (g) tourism;
- (h) environment;
- (i) research, development and innovation;
- (j) intellectual property;
- (k) health;
- (l) energy;
- (m) halal related areas;
- (n) electronic commerce; and
- (o) automotive.

3. The Parties may extend cooperation to other areas not covered by the provisions of this Chapter such as but not limited to education and human capital development, communications, science and technology. 4. Cooperation activities may include but not limited to:

- (a) exchange of information;
- (b) dialogues, conferences and seminars;
- (c) development of joint research programs;
- (d) encouraging private sector cooperation;
- (e) technical, administrative and regulatory assistance; and
- (f) encouragement of reciprocal participation in fairs and exhibitions.

5. Areas of cooperation may be developed through existing or new arrangements.

Article 9.3. Cooperation In Services

1. Recognizing the growing importance of services in the development and growth of their economies, and in compliance with the WTO General Agreement on Trade in Services (the "GATS") and within the bounds of their own fields of competence, the Parties will encourage the cooperation with each other in services sectors.

2. The Parties will determine the mutually beneficial sectors on which cooperation will concentrate. Cooperation will be aimed at promoting the productivity and competitiveness in services sector.

3. The Parties, considering the potential and capacities of their respective construction and construction related services shall explore opportunities of cooperation between their companies in Turkey and Malaysia, as well as in the third countries.

4. The Parties will encourage exchange of information on markets and activities in the respective fields between their private sectors.

Article 9.4. Cooperation In Investment Promotion between the Parties

The Parties recognise the importance of promoting investment and technology flows as a means of achieving economic growth and development. Without prejudice to the provisions of "Agreement between the Government of the Republic of Turkey and the Government of Malaysia for Reciprocal Promotion and Protection of Investments", the Parties agree to cooperate on, inter alia:

- (a) discussing effective ways on investment promotion activities and capacity building;
- (b) facilitating the provision and exchange of investment information including laws, regulations and policies to increase awareness of investment opportunities;
- (c) encouraging and supporting investment promotion activities of each Party or their business sectors; and (d) encouraging the establishment of joint ventures or any form of collaborations between their private sectors with a view to promote investment in third countries.

Article 9.5. Cooperation between Small and Medium-sized Enterprises

With the view to further enhance trade and economic activities, the Parties shall give priority to promoting business and investment opportunities as well as joint ventures between their SMEs. Within this context, the Parties shall, inter alia:

- (a) establish networking opportunities for Malaysian and Turkish SMEs to facilitate collaboration and exchange of experience, such as in the field of technology transfers, product quality improvements, supply chain linkages, access to financing for SMEs and technical assistance;
- (b) facilitate investments between Malaysia and Turkey;
- (c) share experience and improve understanding of each other's policies and operations through visits and discussions by government officials and professionals from Malaysia and Turkey;
- (d) collaborate in assisting capacity building of high skilled workers and technicians such as in construction and construction related services, innovation, research and development, IT and manufacturing sectors;
- (e) exchange expertise on entrepreneurship, management, research and management centres, quality and production standards;
- (f) encourage relevant agencies to discuss and cooperate closely, especially in promoting the skills and development of workers and strengthen the dialogue between relevant institutions; and
- (g) promote entrepreneurial networks of SMEs of respective countries, support cooperation between respective Chambers/Unions of Commerce/Industry and encourage establishment of networks among their appropriate entities that provide assistance to SMEs.

Article 9.6. Cooperation In Trade Development

Cooperation in trade development shall primarily focus on:

- (a) developing, diversifying and increasing trade between the Parties and improving their competitiveness on domestic, regional and international markets;
- (b) enhancing cooperation in customs and origin matters including vocational training in the customs field;
- (c) promoting cooperation between business associations in both countries and encouraging their business circles to participate in fairs and exhibitions;
- (d) developing capacity building, human resources and professional skills in the field of trade and related services in both public and private sectors;
- (e) exchanging experts and information on:
 - (i) laws, regulations and best practices in relation to bilateral trade and investment;
 - (ii) best practices and methodologies for the development of manufacturing industries and free trade zone practices of the Parties; and
 - (iii) standardisation, conformity assessment, metrology and accreditation;
- (f) promoting and facilitating the participation of consulting and contracting engineering companies, construction and construction related services in each other's development projects; and
- (g) encouraging regional cooperation for the development of trade and trade-related infrastructure and services in third countries.

Article 9.7. Cooperation In Agriculture and Food Industry

Taking into account the importance of cooperation in agriculture and food industry for enhancement of bilateral economic and commercial relations, the Parties shall cooperate on, inter alia, the following fields:

- (a) exchange of information, expertise and experts relating to agriculture and food industry;
- (b) organisation of trainings, seminars, conferences and meetings;
- (c) encouragement of establishment of joint activities;
- (d) encouragement of trade and marketing of agricultural products as well as the investment on production and processing of agricultural products in both countries and third countries; and
- (e) promotion of transfer of technology and know-how in agro-industry and food industry.

Article 9.8. Cooperation In Transportation

1. The Parties shall, to the extent possible, promote cooperation between enterprises, organisations and authorities, operating in the fields of land, maritime and air transport for the purposes of enhancing bilateral trade.

2. The Parties shall exchange information and expertise on logistics related to international trade.

Article 9.9. Cooperation In Tourism

The Parties shall cooperate on:

- (a) encouraging cooperation between private and public tourism organisations, associations or unions;
- (b) sharing of information on tourism opportunities, exhibitions, conventions and publications;

- (c) exchanging of expertise and best practices in the field of tourism; and
- (d) strengthening cooperation on tourism training.

Article 9.10. Cooperation In Environment

1. The work programme for environmental cooperation in areas of common global or domestic concern may include, among others:

- (a) climate change;
- (b) biodiversity and conservation of natural resources;
- (c) management of hazardous chemicals;
- (d) air quality;
- (e) water management;
- (f) waste management;
- (g) marine and coastal ecological conservation and pollution control;
- (h) strategic environmental impact assessment;
- (i) management of water and sewerage systems;
- (j) mining practices and mines rehabilitation; and
- (k) improvement of environmental awareness.

2. The Parties agree to designate contact points for better implementation of this Article.

Article 9.11. Cooperation In Research, Development and Innovation

Cooperation in research, development and innovation will be realized through cooperation activities in sectors where mutual and complementary interests exist. Where possible, the Parties shall also encourage partnerships to develop innovative products and services as well as activities to promote linkage, innovation and technology exchange.

Article 9.12. Cooperation In Intellectual Property

1. The Parties agree to cooperate, according to their own capabilities and subject to the laws, regulations and policies on matters related to the practice, promotion, dissemination, management, protection and effective application of intellectual property rights, the prevention of abuse of such rights, the fight against counterfeiting and piracy, and the establishment and strengthening of national organisations for control and protection of such rights.

2. For the purposes of this Chapter, intellectual property rights refer to copyright and related rights, rights in trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and rights in plant varieties as defined and described in the Agreement on Trade Related Aspects of Intellectual Property Rights.

Article 9.13. Cooperation In Health

1. The Parties shall, to the extent possible, cooperate on:

- (a) maternal and child health and reproductive healthcare services;
- (b) sharing information on pharmaceuticals;
- (c) sharing information on medicine training and practices and communication channel building between relevant drug regulatory authorities of the Parties;
- (d) sharing information on food safety;
- (e) sharing information and exchange of expertise in nutrition; and

(f) sharing information, expertise and best practices on healthcare travel.

2. The Parties will determine to work on any other areas or forms of cooperation in health and medicine to be mutually agreed upon.

Article 9.14. Cooperation In Energy

1. The Parties confirm that energy constitutes one of the possible fields of cooperation between the two countries. Therefore, the Parties agree on:

- (a) exchanging information on improvement in energy use effectiveness;
- (b) encouraging public and private sector cooperation; and
- (c) promoting the use of alternate energy sources and renewable energy.

2. The Parties, considering the potential and capacities of their energy sectors, shall explore opportunities of cooperation between their companies in Turkey and Malaysia, as well as in third countries.

3. The Parties may explore cooperation opportunities in the fields of mining and mineral fuels.

Article 9.15. Cooperation In Halal Related Areas

The Parties shall cooperate to encourage promotion of Halal best practices. To this end, the Parties shall:

- (a) share and exchange information, experience and expertise in relation to Halal best practices, methodologies, reference materials and research findings; and
- (b) cooperate in specialized Halal related activities, trade events, conferences and seminars.

Article 9.16. Cooperation on Electronic Commerce

1. The Parties recognise the importance of electronic commerce to facilitate trade opportunities in various sectors. The private sector of both Parties should lead in the development of electronic commerce and in establishing business practices.

2. The Parties should avoid imposing unnecessary restrictions on electronic commerce. Government actions, when needed, should be transparent.

3. The Parties, according to their own capabilities shall work together to support the development of electronic commerce in the future through:

- (a) encouraging bilateral discussions at experts level on issues regarding electronic commerce; and
- (b) exchanging experiences and sharing best practices on electronic commerce related issues.

Article 9.17. Cooperation In Automotive

The Parties shall encourage cooperation between enterprises in the automotive sector to enhance, inter alia, the exchange of technical experts and sharing of knowledge and technology. The areas and forms of cooperation shall be determined by the enterprises and related organisations.

Article 9.18. Sub-committee on Economic and Technical Cooperation

1. For the purposes of this Chapter, the Parties hereby establish the Sub-Committee on Economic and Technical Cooperation.
2. The Sub-Committee on Economic and Technical Cooperation shall be:
 - (a) comprised of representatives of the Parties and may, by consensus, invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and
 - (b) co-chaired by officials of the Parties.
3. The Sub-Committee on Economic and Technical Cooperation shall be coordinated by:
 - (a) in the case of Malaysia, the Ministry of International Trade and Industry or its successor; and
 - (b) in the case of Turkey, Ministry of Economy or its successor.
4. In order to ensure the proper functioning of the Sub-Committee on Economic and Technical Cooperation, each Party shall designate a contact point no later than one month from the date of entry into force of this Agreement. Each Party will notify the other Party promptly of any change of contact point.
5. The Sub-Committee on Economic and Technical Cooperation shall:
 - (a) establish its working procedures;
 - (b) establish its work programme within four months from the date of entry into force of this Agreement;
 - (c) identify and discuss cooperative activities which might be undertaken under this Chapter;
 - (d) review and monitor the implementation and operation of this Chapter;
 - (e) exchange information on the field of cooperation;
 - (f) undertake any other functions within the context of this Chapter to foster cooperation including establishing working groups as the Parties may agree; and
 - (g) report periodically to the Joint Committee the results of its meetings.
6. The Sub-Committee on Economic and Technical Cooperation shall convene its inaugural meeting within one year after the entry into force of this Agreement and subsequently meet at a venue and time to be agreed by the Parties.
7. The Sub-Committee on Economic and Technical Cooperation may establish a working group for each field of cooperation under the Sub-Committee. The working groups shall meet at a venue and time to be agreed by the working groups.

Article 9.19. Financial Provisions

Any cooperation activity envisaged or undertaken under this Chapter shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperation activities shall be borne in such manner as may be mutually determined by the Parties.

Article 9.20. Dispute Settlement

Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 (Dispute Settlement) for any disputes or differences arising from this Chapter.

Chapter 10. Transparency

Article 10.1. Definitions

For the purposes of this Chapter: Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations and that is relevant to the implementation of this Agreement but does not include:

- (a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Article 10.2. Publication

1. Each Party shall exert its best efforts to ensure, wherever possible in electronic form, that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party to become acquainted with them.

2. Where possible, each Party shall, in accordance with its domestic law:

- (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
- (b) provide, where appropriate, interested persons and parties with a reasonable opportunity to comment on such proposed measures on their request.

Article 10.3. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures affecting matters covered by this Agreement and without prejudice to its domestic law, each Party shall ensure in its administrative proceedings applying measures referred in paragraph 1 of Article 10.2 (Publication) to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 10.4. Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi-judicial, or administrative tribunals, or procedures for the purposes of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall, in accordance with its domestic law, ensure that in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its

domestic law that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 10.5. Exchange of Information

1. Upon request and to the extent possible, each Party shall promptly provide information and reply to any question from the other Party of any proposed or actual measure that materially affects the operation of this Agreement or otherwise substantially affects the other Party's interests under this Agreement.
2. Any request or information under this Article shall be conveyed to the other Party through contact points.
3. Any information provided under this Article shall be provided normally within 60 days and shall be without prejudice as to whether the measure is consistent with this Agreement.
4. In the case of any inconsistency between the provisions of this Article and provisions relating to transparency in other Chapters, the latter shall prevail to the extent of the inconsistency.

Article 10.6. Contact Points

1. In order to facilitate communication between the Parties on any trade matter covered by this Agreement, the Parties hereby establish the following contact points:
 - (a) for the Republic of Turkey: Ministry of Economy, or its successor; and
 - (b) for Malaysia: Ministry of International Trade and Industry, or its successor.
2. On the request of either Party, the contact point of the other Party shall indicate the office or official responsible for the matter and provide the required support to facilitate communication with the requesting Party. Each Party shall notify the other Party of any changes of its contact point in due time.

Chapter 11. Institutional Provisions

Article 11.1. Joint Economic and Trade Council

A Joint Economic and Trade Council is hereby established which shall be co-chaired by Ministers in charge of foreign trade and meet at least once in every two years in accordance with the conditions laid down in its rules of procedure.

Article 11.2. Duties of the Joint Economic and Trade Council

The Joint Economic and Trade Council shall review the progress made in the implementation of this Agreement. It shall also examine any major issues arising within the framework of this Agreement including its economic and social impact and any other bilateral or international issues of mutual interest.

Article 11.3. Procedures of the Joint Economic and Trade Council

1. The Joint Economic and Trade Council shall consist of senior officials of the Parties. The Joint Economic and Trade Council may invite private sector representatives to its meetings upon its approval.
2. The Joint Economic and Trade Council shall establish its rules of procedures and financial arrangements.

3. The Joint Economic and Trade Council may take decisions on any matter related to this Agreement subject to the respective internal legal procedures of the Parties. The Joint Economic and Trade Council may also make recommendations on matters related to this Agreement.

4. The Joint Economic and Trade Council shall take decisions and make recommendations by the consensus of the Parties.

Article 11.4. Joint Committee

1. Subject to the powers of the Joint Economic and Trade Council, a Joint Committee is hereby established, in which each Party shall be represented by its senior officials. The Joint Economic and Trade Council may delegate to the Joint Committee, in full or in part, any of its powers.

2. For the objective of the proper implementation of this Agreement, the functions of the Joint Committee shall include, but not be limited to:

- (a) review the implementation and operation of this Agreement;
- (b) explore ways to enhance trade between the Parties and to further the objectives of this Agreement, including the possibility of further removal of restrictions to trade;
- (c) establish sub-committees or working groups as it considers necessary to assist it in accomplishing its tasks and address specific issues;
- (d) review, consider and, as appropriate, decide on specific matters related to the operation and implementation of this Agreement, including matters reported by sub-committees and working groups;
- (e) supervise and coordinate the work of sub-committees and working groups established under this Agreement and call on technical experts on any matter falling within its functions;
- (f) take decisions in the matters related to this Agreement, including decisions to adopt any amendment to this Agreement. The Joint Committee may also make recommendations to matters related to this Agreement. The Joint Committee shall take decisions and make recommendations by the consensus of the Parties. The decisions taken by the Joint Committee, including on any amendment to this Agreement shall be subject to the completion of the respective internal legal ratification procedures of the Parties;
- (g) adopt any decisions and recommendations of the sub-committees where necessary;
- (h) facilitate, as appropriate, the avoidance and settlement of disputes arising under this Agreement; and
- (i) carry out any other functions as the Parties may agree.

3. The Joint Committee shall establish its rules and procedures.

4. The Joint Committee shall convene its inaugural meeting within one year after the entry into force of this Agreement. Its subsequent meetings shall be held at such frequency as the Parties may agree upon. Special meetings of the Joint Committee may be convened, as mutually agreed by both Parties, within 30 days upon the request of either Party. The Joint Committee shall convene alternately in Malaysia and Turkey, unless the Parties agree otherwise.

Article 11.5. Sub-committees

1. The following sub-committees established under this Agreement are subject to the powers of the Joint Committee:

- (a) Sub-Committee on Trade in Goods;

- (b) Sub-Committee on Rules of Origin;
- (c) Sub-Committee on Sanitary and Phytosanitary Measures;
- (d) Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures; and
- (e) Sub-Committee on Economic and Technical Cooperation.

2. The sub-committees may set up ad hoc working groups to deal with specific issues referred to them by the Joint Committee. Other procedures and functions of the sub-committees are to be specified in the individual Chapters where they are established.

Chapter 12. Dispute Settlement

Article 12.1. Objective

The objective of this Chapter is to provide an effective and efficient process for consultations and settlement of disputes arising under this Agreement and to arrive at, where possible, a mutually agreed solution.

Article 12.2. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the settlement of disputes between the Parties regarding the interpretation and application of this Agreement.

2. Subject to Article 12.3 (Choice of Forum), this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are Parties.

Article 12.3. Choice of Forum

1. Where a dispute regarding the same matter arises under this Agreement and under another agreement to which the disputing Parties are party, the complaining Party may select the dispute settlement procedure in which to settle the dispute.

2. The complaining Party shall notify the other Party in writing of its intention to select a particular forum before doing so.

3. Once the complaining Party has requested a Panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other.

Article 12.4. Consultations

1. Each Party shall accord adequate opportunity for consultations with the other Party with respect to any matter affecting the interpretation and application of this Agreement. Such matters shall as far as possible be settled through consultation between the Parties.

2. The request for consultations shall be in writing. The request shall include the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint, and provide sufficient information to enable an examination of the matter. A copy of the request for consultations shall be delivered to the Joint Committee. The Party to which the request is made shall reply to the request in writing within 10 days after the date of its receipt, and shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods;

or

(b) 30 days after the date of receipt of the request for all other matters.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. Upon initiation of consultations, the Parties shall:

(a) provide sufficient information to enable a full examination of how the matter might affect the operation and application of this Agreement; and

(b) treat any confidential information designated as such by the other Party providing the information.

4. The complaining Party may request the Party complained against to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter under consultations. Consultations shall take place in the territory of the Party complained against, unless the Parties agree otherwise.

5. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 12.5. Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

2. If the Parties agree; good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an Arbitration Panel.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Parties in any further proceedings.

Article 12.6. Request for the Establishment of an Arbitration Panel

1. The Complaining Party may request in writing for the establishment of an Arbitration Panel, if:

(a) the Party complained against does not enter into consultations within 30 days after the date of its receipt of the request for consultations under Article 12.4 (Consultations);

(b) the Parties fail to resolve a dispute 30 days after the date of receipt of the request for consultations regarding a matter concerning perishable goods; or

(c) the Parties fail to resolve a dispute 60 days after the date of receipt of the request for consultations regarding any other matter.

2. The request to establish an Arbitration Panel shall identify:

(a) the specific measures at issue;

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

(c) the factual basis for the complaint.

3. The establishment of an Arbitration Panel shall not be requested on any matter relating to a proposed measure.

Article 12.7. Terms of Reference

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the Arbitration Panel, the terms of reference of 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 12.6 (Request for the Establishment of an Arbitration Panel), to make findings of law and fact

and determinations on whether the measure is not in conformity with the Agreement and to issue a written report for the resolution of the dispute. If the Parties agree, the Arbitration Panel may make recommendations for resolution of the dispute."

Article 12.8. Composition and Establishment of Arbitration Panel

1. An Arbitration Panel shall consist of three arbitrators. Each Party shall appoint one arbitrator, who may be its national, within 30 days of the date of the receipt of the request for the establishment of the Arbitration Panel.

2. The Parties shall agree on and appoint the third arbitrator, who shall be the chairperson of the Arbitration Panel, within 45 days of the date of receipt of the request for the establishment of the Arbitration Panel. If the chair of the Arbitration Panel has not been designated by the Parties within 15 days of the appointment of the second arbitrator, the two arbitrators appointed in accordance with paragraph 1 shall designate by common agreement the third arbitrator who shall chair the Panel. If the chair of the Arbitration Panel has not been designated by the arbitrators within 30 days of the appointment of the second arbitrator, either Party may request the Director General of the WTO to appoint the third arbitrator to chair the Arbitration Panel. In the event where the Director General of the WTO is not able to appoint the third arbitrator, for any reason, within 45 days, the Parties to the dispute shall consult each other in order to jointly appoint the third arbitrator within a further period of 30 days. During this consultation, the Parties shall take into consideration the indicative list of governmental and non-governmental panellists established by the WTO.

3. The date of establishment of an Arbitration Panel shall be the date on which the last arbitrator is appointed.

4. All arbitrators shall have specialized knowledge or experience in law, international trade or other matters relating to this Agreement or in the resolution of disputes arising under international trade agreements. They shall be independent, serve in their individual capacities and not be affiliated with, nor take instructions from any Party or organisation related to this dispute and shall comply with Annex 12-1 of this Agreement.

5. The chair of the Arbitration Panel shall not be a national of a Party, nor have his or her usual place of residence in the territory of a Party and not be employed by either Party or have dealt with the matter in any capacity.

6. Where a Party considers that an arbitrator does not comply with the requirements of Code of Conduct, the Parties shall consult and, if so agreed, they shall replace that arbitrator in accordance with paragraph 7.

7. If an arbitrator appointed under this Article becomes unable to participate in the proceeding or resigns or is to be replaced according to paragraph 6, a successor shall be selected within 10 days in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the Arbitration Panel shall be suspended for a period beginning on the date the arbitrator becomes unable to participate in the proceeding, resigns, or is to be replaced according to paragraph 6. The work of the Arbitration Panel shall resume on the date the successor is appointed.

Article 12.9. Functions and Proceedings of the Arbitration Panel

1. The function of an Arbitration Panel is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and

conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it.

2. Arbitration Panels shall interpret this Agreement in accordance with customary rules of interpretation of public international law.

3. Arbitration Panel meetings shall be closed to the public, unless the Parties decide otherwise. 4. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the Arbitration Panel, including any comments on the interim report and responses to questions put by the Arbitration Panel, shall be made available to the other Party.

5. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

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

7. The Arbitration Panel shall take its decisions by consensus. In the event where the Arbitration Panel is unable to reach a consensus, it may take its decisions by majority vote.

8. On request of a Party or on its own initiative and subject to such terms and conditions as the Parties may agree within 10 days of the date of establishment of the Arbitration Panel, the Arbitration Panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The Arbitration Panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments. Where the Arbitration Panel takes the information or technical advice into account in the preparation of its report, it shall also address any comments by the Parties on the information or technical advice.

9. The deliberations of the Arbitration Panel and the documents submitted to it shall be kept confidential.

10. Notwithstanding paragraph 9, either Party may make public statements as to its own position or submissions regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the Arbitration Panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 30 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed to the public.

Article 12.10. Expenses

Each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chairperson of an Arbitration Panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Article 12.11. Arbitration Panel Report

1. The reports of the Arbitration Panel shall be drafted without the presence of the Parties. The Arbitration Panel shall base its reports on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the Arbitration Panel in accordance with paragraph 8 of Article 12.9

(Functions and Proceedings of the Arbitration Panel).

2. The Arbitration Panel shall issue to the Parties an initial report setting out the findings of facts, the applicability of the relevant provisions, the basic rationale behind any findings and its conclusions within 90 days of the date of establishment of the Arbitration Panel. Where the Arbitration Panel considers it cannot issue its initial report within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Under no circumstances should the initial report be issued later than 120 days after the date of the establishment of the Arbitration Panel.

3. Any Party may submit written comments to the Arbitration Panel on its initial report within 14 days of its issuance. After considering any written comments by the Parties on the initial report, the Arbitration Panel may reconsider its report and make any further examination it considers appropriate.

4. The Arbitration Panel shall issue its final report to the Parties within 120 days of the date of the establishment of the Arbitration Panel. Where the Arbitration Panel considers it cannot issue its final report within 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Under no circumstances should the ruling be issued later than 150 days after the date of the establishment of the Arbitration Panel.

5. The final report shall contain:

- (a) the descriptive part summarising the submissions and arguments of the Parties;
 - (b) the findings of the fact;
 - (c) the applicability of relevant provisions and the basic rationale behind any findings;
 - (d) recommendation that the Party complained against bring the measure into conformity with the obligations under this Agreement; and
 - (e) recommendations, if the Parties agree, on the means to resolve the dispute.
6. The report of the Arbitration Panel shall be final and binding on the Parties.

7. The findings and determinations of the Arbitration Panel and, if applicable, any recommendations cannot add to or diminish the rights and obligations of the Parties provided in this Agreement.

8. On matters of urgency, including those regarding perishable goods, the Arbitration Panel shall make every effort to issue its interim and final reports to the Parties within half of the respective time periods under paragraphs 2 and 4. The Arbitration Panel may give a preliminary report on whether a case is urgent.

Article 12.12. Suspension or Termination of Proceedings

1. The Parties may agree that the Arbitration Panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames regarding the work of the Arbitration Panel shall be extended by the amount of time that the work was suspended. If the work of the Arbitration Panel has been suspended for more than 12 months, the authority for establishment of the Arbitration Panel shall lapse unless the Parties agree otherwise. This shall not prejudice the rights of the complaining Party to request at a later stage, the establishment of an Arbitration Panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of the Arbitration Panel by jointly so notifying the chairperson of the Arbitration Panel at any time before the issuance of the report to the Parties.

Article 12.13. Implementation

1. The Party complained against shall promptly comply with the findings and rulings of the Arbitration Panel. Where it is not practicable to comply immediately, the Party complained against shall comply with the findings and rulings within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the release of the final report of the Arbitration Panel referred to in Article 12.11 (Arbitration Panel Report), either Party may refer the matter to an Arbitration Panel, which shall determine the reasonable period of time following consultation with the Parties.

2. The Party complained against shall notify to the complaining Party the implementing measures that it has taken to comply with the determinations and recommendations, if any, of the Arbitration Panel, before the expiry of the reasonable period of time agreed by the Parties or determined in accordance with paragraph 1.

3. Where there is disagreement between the Parties as to whether the Party complained against eliminated the non-conformity as determined in the report of the Arbitration Panel within the reasonable period of time as determined pursuant to paragraph 2, either Party may refer the matter to an Arbitration Panel.

4. The Arbitration Panel for the purpose of this Article shall be the Arbitration Panel as established under paragraph 2 of Article 12.15 (Review).

Article 12.14. Compensation and Suspension of Benefits

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies the complaining Party that it is impracticable, or the Arbitration Panel to which the matter is referred pursuant to paragraph 3 of Article 12.13 (Implementation) rules that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with the complaining Party with a view to reaching mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days of the date of receipt of the request mentioned in paragraph 1, the complaining Party may, by giving notification, suspend benefits conferred on the other Party under this Agreement. Such suspension shall only take effect after 30 days of the notification.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the Arbitration Panel referred to in Article 12.11 (Arbitration Panel Report). The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:
(a) the complaining Party should first seek to suspend benefits with respect to the same sector(s) as that affected by the measure or other matter that the Arbitration Panel referred to in Article 12.11 (Arbitration Panel Report) has found to be inconsistent with this Agreement;

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

(c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of benefits that have been impaired.

Article 12.15. Review

1. Without prejudice to the procedures in Article 12.14 (Compensation and Suspension of Benefits), the Party complained against may request an Arbitration Panel to determine whether the requirements for the suspension of benefits set out in paragraph 2, 3 or 4 of Article 12.14 (Compensation and Suspension of Benefits), have not been met. 2. The Arbitration Panel that is established for the purposes of this Article or Article 12.13 (Implementation) shall have, to the extent possible, as its arbitrators, the arbitrators of the original Arbitration Panel. If this is not possible, then the arbitrators to the Arbitration Panel that is established for the purposes of this Article or Article 12.13 (Implementation) shall be appointed pursuant to Article 12.8 (Composition and Establishment of Arbitration Panel). The Arbitration Panel established under this Article or Article 12.13 (Implementation) shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the Arbitration Panel considers that it cannot issue its report within the aforementioned periods, it may extend that period for a maximum of 30 days with the consent of the Parties. The report shall be final and binding on the Parties.

3. If the Arbitration Panel decides that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits it has suspended under Article 12.14 (Compensation and Suspension of Benefits). If the Arbitration Panel decides that the level of benefits suspended by the complaining Party is excessive, the complaining Party shall modify the level of suspension of concessions accordingly.

Article 12.16. Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by Annex 12-2 of this Agreement. Arbitration Panels may, after consulting the Parties, adopt additional rules of procedure not inconsistent with this Agreement.

2. Any time period or other rules and procedures for Arbitration Panels provided for in this Chapter may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Chapter 13. General Exceptions

Article 13.1. General Exceptions

For the purposes of this Agreement, Article XX of GATT 1994 and its interpretive notes (including its footnotes) are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 13.2. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to prevent a Party from taking any actions which it considers necessary for the protection

of its essential security interests:

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

(ii) taken in time of war or other emergency in international relations;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

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

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

Article 13.3. Disclosure of Information

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:

(a) would be contrary to the public interest as determined by its legislation;

(b) is contrary to any of its legislation, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) would impede law enforcement; or

(d) would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 13.4. Balance-of-payments Exceptions on Trade In Goods

1. Should a Party decide to impose measures for balance-of-payments purposes, it shall do so, only in accordance with its rights and obligations under GATT 1994, including the Declaration on Trade Measures Taken for Balance of Payments Purposes and the Understanding on the Balance of Payments Provisions of the GATT 1994.

2. Any restrictive measures adopted or maintained by a Party or any changes therein, shall be promptly notified to the other Party from the date such measures are taken. The Party adopting or maintaining any restrictive measures under paragraph 1 shall promptly commence consultations with the other Party in order to review the measures adopted or maintained by it.

3. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

4. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Party, as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 13.5. Taxation Measures

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

2. For the purposes of this Agreement, "taxation measures" means any measures levying direct or indirect taxes, including excise duties and sales tax, as defined by the national laws and regulations of the Parties as long as these taxes are not used for the purpose of protecting the domestic industry of the Party levying the duties.

3. This Agreement shall only grant rights or impose obligations with respect to taxation

measures where corresponding rights or obligations are also granted or imposed under the WTO Agreement.

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any other agreement on taxation measures. In the event of any inconsistency between this Agreement and any such agreement on taxation measures, the latter shall prevail to the extent of the inconsistency.

Chapter 14. Final Provisions

Article 14.1. Annexes, Appendices, Notes and Footnotes

The Annexes, Appendices, Notes and Footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 14.2. Succession of Treaties or International Agreements

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which a Party is party.

Article 14.3. Evolutionary Clause

1. The Parties may mutually agree to extend this Agreement with the aim of broadening and supplementing its scope to specific sectors or activities in the light of the experience gained during its implementation.

2. The Parties agree to begin negotiations on trade in services one year after the entry into force of this Agreement with a view to progressively liberalize trade in services between them in conformity with Article V of GATS. They also agree to begin exploratory talks on investment one year after the entry into force of this Agreement with a view to include a Chapter on Investment to this Agreement, on a mutually advantageous basis.

Article 14.4. Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 14.5. Amendments

1. This Agreement may be amended in writing by agreement between the Parties.

2. Notwithstanding paragraph 1, amendments relating only to the Annexes to this Agreement may be made through diplomatic notes exchanged between the Parties.

3. Amendments to this Agreement shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the first day of the second month following the date on which the Parties exchange written notification that such procedures have been completed, or on a date to be agreed upon by the Parties.

4. Amendments shall not affect the rights and obligations of the Parties provided for under this Agreement until the amendments enter into force.

Article 14.6. General Review

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within two years of the entry into force of this Agreement and at least every five years thereafter.

Article 14.7. Termination of Existing Agreements

The following Agreements shall be terminated on the date of entry into force of this Agreement: (a) Trade Agreement between the Republic of Turkey and Malaysia (signed on 13 February 1977); and (b) Economic and Technical Cooperation Agreement between the Government of the Republic of Turkey and the Government of Malaysia (signed on 13 February 1977).

Article 14.8. Duration and Termination

1. This Agreement shall be valid unless it is terminated.
2. Either Party may give written notice to the other Party of its intention to terminate this Agreement. Termination shall take effect on the first day of the seventh month after the date of the notice of termination.
3. The other Party may request in writing consultations concerning any matter that would arise from the termination within 45 days after the date of receipt of the notice referred to in paragraph 2.
4. The requested Party shall enter into consultations in good faith with a view to reaching an equitable agreement within 30 days after the date of receipt of the request referred to in paragraph 3.

Article 14.9. Entry Into Force

1. The Parties shall ratify this Agreement in accordance with their domestic legal procedures. The Parties shall exchange written notification upon completion of such procedures.
2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties exchange written notification that such procedures have been completed.

Article 14.10. Authentic Texts

This Agreement shall be done in Turkish and English languages, both being equally authentic. In case of divergence, the English text shall prevail.

Article Article

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement. DONE at Ankara, in two originals, this seventeenth day of April, 2014. FOR THE GOVERNMENT OF MALAYSIA: : Dato' Sri Mustapa MOHAMED Minister of International of Trade and Industry FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY Nihat ZEYBEKÇİ Minister of Economy

